

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION**

JEFF HICKS, on behalf of himself and all
others similarly situated,

Plaintiff(s),

vs.

MERCEDES-BENZ U.S.

INTERNATIONAL, INC., an Alabama
Corporation,

Defendant.

CV08-CO-00536-W

GRAYLYN LAWSON, ET AL., on behalf
of himself and all others similarly situated,

Plaintiff(s),

vs.

MERCEDES-BENZ U.S.

INTERNATIONAL, INC., an Alabama
Corporation,

Defendant.

CV09-CO-01157-W

**PLAINTIFFS' RESPONSE TO DEFENDANT MERCEDES-BENZ U.S.
INTERNATIONAL, INC.'S MOTION FOR FINAL SUMMARY JUDGMENT AS TO
"PLAINTIFFS WHO ARE EXEMPT UNDER THE EXECUTIVE EXEMPTION
BECAUSE THEY ADMIT THEIR PRIMARY DUTY IS MANAGEMENT AND THEY
PERFORM SOME NON-EXEMPT WORK BUT THAT WORK IS DIRECTLY
RELATED TO THEIR EXEMPT DUTIES"**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Mercedes' instant motion is based on the mistaken presumption that Plaintiffs primary duty is "management," and thus the non-exempt work that they perform is directly related to their management duties. In reality, the reverse is true—Plaintiffs' relatively few non-exempt duties are tangential to their primary duty as quality control and repair personnel. Mercedes is further mistaken in arguing that Plaintiffs only check quality in connection with their supervisory duties. Plaintiffs perform quality checks on the cars that Mercedes produces so as to prevent defects from leaving the production facility; not to check up on Team Member ("TM") performance. Only Mercedes could characterize a Group Leader ("GL") who spends "100 percent" of his time working the production line and checking quality as performing a supervisory duty of checking TM performance. See, e.g., Oglesby Dep., pp. 91-9. If that were the case, then every Quality Control employee would be classified as exempt under the executive exemption. See e.g., Pressler v. FTS USA, LLC, 2010 U.S. Dist. LEXIS 131047, *1-2 (E.D. Ark. Dec. 9, 2010). This would be an absurd interpretation of the executive exemption. Rather than being exempt managers, Plaintiffs are nothing more than non-exempt "working foremen" or "working supervisors." See 29 C.F.R. § 541.115 (1992) ("[G]roup leaders . . . [who perform] work of the same nature as that performed by the employees' subordinates must be counted as nonexempt work and if the amount of such work performed is substantial[, i.e., 20 percent,] the exemption does not apply."); 29 C.F.R. § 541.106 (c) ("[W]orking supervisor whose primary duty is performing nonexempt work on the production line in a manufacturing plant does not become exempt merely because the nonexempt production line employee occasionally has some responsibility for directing the work of other nonexempt production line employees.").

Other factors also support this conclusion that Plaintiffs are nonexempt “working foremen” or “working supervisors.” Based on Mercedes’ overtime policy, GLs earn less than non-exempt Team Leaders (“TLs”) and non-exempt Team Members (“TMs”) on most occasions. This is one factor that supports the conclusion that GLs’ primary duty is not “management.” See 29 C.F.R. § 541.700(a); Morgan v. Family Dollar Stores, 551 F.3d 1233, 1271 (11th Cir. 2008). Plaintiffs’ evidence also indicates that GLs simply relay company edicts, they have no independent discretion, they are closely supervised by Assistant Managers (“AMs”) and Mercedes upper management, and are directed to perform manual labor by their AMs. See, e.g., Crawford Dep., pp. 84-85 (testifying that he was directed by his AM to stand at the end of his line and check quality; he is responsible for checking quality because there is not a quality person in his area). This is yet another factor that supports the conclusion that GLs’ primary duty is not management. See 29 C.F.R. § 541.700(a); 29 C.F.R. § 541.106(a)(“[While] exempt executives make the decision regarding when to perform nonexempt duties . . . the nonexempt employee generally is directed by a supervisor to perform exempt work”); Morgan, 551 F.3d at 1270, n.57 (stating that “the frequency with which an employee exercises discretionary powers [remains in the] primary duty analysis”). Also, GLs do not have any authority to hire, fire, or promote employees and there are factual disputes as to the amount of weight Mercedes gives to GLs’ recommendation. These factors alone defeat Mercedes’ motion for summary judgment because GLs were not engaged in the “management” of Mercedes.

Moreover, as a threshold matter, the “executive exemption” is inapplicable because GLs were not paid a true salary. Mercedes’ “non-production Friday” policy violated the salary basis by causing a diminution in GL salaries. All of these considerations raise triable issues of fact for a jury that GLs were misclassified as exempt employees. Therefore, as this Court ruled in Hicks

v. Mercedes, 7:08-CV-0536-LSC, “Memorandum of Opinion,” Mercedes’ instant summary judgment motion must be denied because the question of whether Plaintiffs’ primary duty is “management,” and whether Plaintiffs’ non-exempt duties are directly related to their exempt duties, can only be resolved by a jury. See also Morgan v. Family Dollar Stores, 551 F.3d 1233, 1271 (11th Cir. 2008) (recognizing that the primary duty determination is “necessarily fact-intensive”).

II. DISPUTED FACTS

A. STEVEN CAMPBELL	
1. Steven Campbell ("Campbell") began work as a TM at MBUSI on October 7, 1996. (Campbell Dep., p. 11). ¹	Undisputed.
2. After six months as a Production TM, Campbell was promoted to TL and received a raise. (Campbell Dep., pp. 25, 29).	Undisputed.
3. Campbell was a TL in the Assembly Shop for approximately three and a half years, then he transferred to become a TM in Quality for about a year and a half until he returned as a TM in the Assembly Shop. (Campbell Dep., pp. 37, 40-41).	Undisputed.
4. Campbell was then a TM on the Trim 1 Line for approximately one year before he was promoted to TL on Trim 1 Line, he was a TL on Trim 1 Line for approximately two years, and he was a TL on the Trim 0 Line until he officially assumed the position of GL on April 25, 2005 over the Final 3 West Line, B Shift. (Campbell Dep., pp. 41-42, 46-47, 49-50, 52, 62; Campbell Dep. Ex. 1).	Undisputed.
5. When Campbell was GL over the Final 3 West Line, he had three teams in his group, three TLs and approximately eighteen TMs in his group. (Campbell Dep., p. 64).	Disputed. Objection: misstates testimony. Campbell was not the GL “over” Final 3 West Line. He was a GL on the Final 3 West Line. Campbell did not “have” three teams with three TLs and approximately eighteen TMs. There

¹ The Deposition of Steven Campbell and exhibits to the deposition are attached as Ex. 171 to MBUSI's Evidentiary Submission (Volume 14).

	were three teams on Final 3 West Line, with three TLs and approximately eighteen TMs. (Campbell Dep., p. 64).
6. After about two years, Campbell moved to the Trim 1 West Line as GL. (Campbell Dep., p. 62).	Undisputed.
7. As GL on Trim 1 West Line, Campbell's group had four TLs, four teams, and about twenty-five TMs. (Campbell Dep., pp. 66-67).	Disputed. Objection: misstates testimony Trim 1 West Line was not "Campbell's group." There were four TLs, four teams, and about twenty-five TMs on Trim 1 West Line. (Campbell Dep., p. 66-67).
8. After about a year as GL on Trim 1 West Line, Campbell moved to GL over the Trim 0 Line for approximately a year and then returned to the Trim 1 West Line as GL. (Campbell Dep., p. 63).	Undisputed.
9. As GL on Trim 0 Line, Campbell's group had three TLs, three teams and approximately eighteen TMs. (Campbell Dep., pp. 69-70).	Disputed. Objection: misstates testimony. Trim 0 was not "Campbell's group." There were three TLs, three teams and approximately eighteen TMs on Trim 0. (Campbell Dep., p. 69-70).
10. When Campbell returned to the Trim 1 West Line as GL, he had four teams, four TLs and approximately twenty-four TMs. (Campbell Dep., p. 71).	Disputed. Objection: misstates testimony. Campbell did not "have" four teams, four TLs and approximately twenty-four TMs. There were four teams, four TLs and approximately twenty-four TMs on the Trim 1 West Line. (Campbell Dep., p. 71).
11. As a GL at MBUSI, Campbell earns at least \$455.00 per week in salary. (Campbell RFA #41). ²	Undisputed.
12. Campbell supervises the TLs and TMs in his group. (Campbell RFA #1).	Disputed.
13. Campbell makes decisions about his group and carries out his plans for the group. (Campbell RFA # 35).	Disputed. As a GL, Campbell does not schedule meetings for his group. He is required to hold a standard start-up meeting prior to each shift. (Campbell Dep., p. 72).

² Campbell Responses to Requests for Admission are attached as Ex. 172 to MBUSI's Evidentiary Submission (Volume 14).

	<p>If there was manpower issue in the group, Campbell would inform his AM. His AM would then make a decision as to who should be moved from where and to where. (Campbell Dep., pp. 75-76).</p> <p>If Campbell is working on the line while a safety issue occurs, he has to receive permission from his AM or the shop manager before leaving the line to handle the situation. He cannot decide whether or not to leave the line to deal with a safety issue. (Campbell Dep., pp. 107-08).</p>
14. Campbell directs his group in meeting the company's objectives for safety, product quality, accuracy, productivity, cost reduction, housekeeping, efficiency, training and team harmony. (Campbell RFA #5).	<p>Disputed.</p> <p>As a GL, Campbell was given specific instructions on how to raise morale in his group and increase team harmony. (Campbell Dep., p. 162-63).</p>
15. Campbell leads his group in meeting company standards; he leads change in his group; and he uses leadership skills in his GL position. (Campbell RFA ##25, 26 & 28).	Disputed.
16. Campbell shares his knowledge and experience with his group. (Campbell RFA #30).	Undisputed.
17. Campbell shows and supports top performance in his group. (Campbell RFA #29).	Objections: Vague, Ambiguous, Unintelligible.
18. Campbell uses his best judgment in performing all of his GL job duties. (Campbell RFA #23).	Disputed.
19. Campbell fulfills all of the roles and responsibilities of his GL position. (Campbell RFA #24).	<p>Disputed.</p> <p>Campbell states that as a GL, he has never developed an annual plan. In fact, some years, he has not even received a copy of the annual plan from his AM. (Campbell Dep., p. 154-55).</p>
20. Campbell thinks strategically and establishes direction for his group. (Campbell RFA #27).	<p>Disputed.</p> <p>As a GL, Campbell follows directions from his AM and Manager. MBUSI's policies establish direction for the group. (Campbell Dep., pp. 150-52).</p>
21. As GL, Campbell works to accomplish the Company's goals and targets. (Campbell Dep., p. 150).	Undisputed.

22. As GL, Campbell has his TMs and TLs follow their roles and responsibilities on the Roles and Responsibilities Card. (Campbell Dep., p. 145; Campbell Dep. Ex. 16).	Undisputed.
23. As GL, Campbell states that his primary responsibilities are to monitor his TLs and TMs to make sure they are working within MBUSI standards. (Campbell Dep., pp. 167-68).	<p>Disputed. Objection: misstates testimony.</p> <p>Campbell testifies that <i>one</i> of his primary responsibilities is to observe TLs and TMs to see if they are working in standard and communicate to management if he observes a TL or TM not working in standard. (Campbell Dep., p. 167-68).</p> <p>Campbell states that he spends the majority of his time “on line quality checks, making repairs, moving parts, answering line pulls, quality walk backs. (Campbell Dep., p. 106).</p>
24. As GL, Campbell looks everyday to recognize if they are doing that. (Campbell Dep., p. 167).	<p>Disputed. Objections: Vague, Ambiguous, Unintelligible.</p> <p>Campbell’s testimony is that he observes TMs and TLs to see if they are not working in standard and reports any TMs and TLs working outside of standard to management. (Campbell Dep., p. 167).</p>
25. As GL, Campbell monitors his TMs to see if they are performing correctly. (Campbell Dep., p. 168).	<p>Undisputed.</p> <p>Campbell reports and TMs and TLs who are not performing within standard to management. (Campbell Dep., p. 168).</p>
26. As GL, it is Campbell's job to make sure TMs are following the processes described in the job element sheets. (Campbell Dep., p. 98).	<p>Disputed. Objection: misstates testimony.</p> <p>Campbell testified that should make sure that the TMs are following the JES and that he is able to ask a TM to perform a process correctly if he sees them doing it incorrectly. (Campbell Dep., 98-99).</p>
27. Campbell regularly provides his TMs feedback when a problem arises. (Campbell Dep., pp. 120-21).	Undisputed.
28. As GL, Campbell spends time walking through his group and observing his TMs' performance. (Campbell Dep., p. 106).	<p>Undisputed.</p> <p>Campbell described this as “an activity I do,” but states that he spends the majority of his time doing “on line quality checks, making repairs,</p>

	moving parts, answering line pulls, quality walk backs.” (Campbell Dep., p. 106).
29. When Campbell performs a walk through, if he observes something out of standard, he corrects his TM and gives feedback where needed. (Campbell Dep., p. 106).	Undisputed.
30. MBUSI regularly emphasizes to Campbell that he should watch for any out of standard conditions and that he should observe his TMs' overall performance. (Campbell Dep., p. 106).	Undisputed.
31. As GL, Campbell works to try to prevent quality issues. (Campbell Dep., p. 114).	Undisputed.
32. If one of Campbell's TMs builds a vehicle incorrectly, he holds them responsible. (Campbell Dep., p. 113).	Undisputed.
33. Campbell initiates, facilitates and monitors problem solving in his group. (Campbell RFA #12).	Undisputed. Campbell works with other MBUSI employees when developing countermeasures to prevent injury. (Campbell Dep., p. 119).
34. Campbell ensures that production and quality goals are met in his group. (Campbell RFA ##13 & 22).	Disputed. Campbell testifies that he should “know” the quality of his group, but not that he ensures the quality. (Campbell Dep., p. 134).
35. Campbell initiates continuous improvement activities in his group and leads the implementation of initiatives in his group. (Campbell RFA #16).	Undisputed.
36. As GL, before Campbell's shift begins, he prints out SQDCM reports and checks his emails for safety reports, quality reports, toolbox memos, and communications from HR. (Campbell Dep., p. 74).	Undisputed.
37. Campbell also will review the turnover log from the previous shift before his shift starts. (Campbell Dep., pp. 74-75).	Undisputed.
38. As GL, Campbell is responsible for updating the SQDCM Board once a day. (Campbell Dep., p. 81).	Undisputed.
39. It is important to update the SQDCM Board because it provides feedback information for the team. (Campbell Dep., p. 81).	Undisputed.
40. Before the shift starts, Campbell checks the call-in Hot Line, checks voice mail for call-ins, checks his attendance calendar and documents any turnover on his regular vacation plan. (Campbell Dep., pp.	Undisputed.

73-74).	
41. In checking his attendance, Campbell needs to recognize if there is a manpower issue and if there is, he will communicate it to the AM in their start up meeting and update the Attendance Board. (Campbell Dep., p. 75).	Undisputed.
42. If Campbell's group is within standard, he will move TMs around to handle manpower issues, but if his group is out of standard, he must discuss it with his AM. (Campbell Dep., p. 75).	Undisputed.
43. As GL, Campbell leads a five minute start up meeting that occurs at 6:15 at the start of the shift. (Campbell Dep., pp. 72-73).	Undisputed.
44. Campbell leads the startup meeting at which he communicates to the TMs the goals for the day. (Campbell Dep., p. 36).	Undisputed.
45. During the start up meeting, Campbell covers the previous shift's results, any new memorandums, any Quality topics from the previous day, any safety topics from the previous day and SQDCM issues. (Campbell Dep., p. 73).	Undisputed.
46. As GL, Campbell attends meetings called by the Managers and AMs, HR might schedule meetings and other departments would schedule meetings for him to attend. (Campbell Dep., p. 78).	Undisputed.
47. As a GL, Campbell will have monthly meetings with HR where topics such as policy changes and production schedule changes are discussed. (Campbell Dep., p. 58).	Undisputed. Campbell testified that when he was a TM and/or TL, he also had meetings with HR. (Campbell Dep., p. 59).
48. As GL, Campbell tracks his top three scrap items to try to help maintain the budget. (Campbell Dep., p. 139).	Undisputed.
49. As GL, Campbell spends most of his day performing on line quality checks, making repairs, moving parts, answering line pulls, and performing quality walk backs. (Campbell Dep., p. 106).	Undisputed.
50. Generally a TL responds to a Line pull first, but if he cannot resolve the issue, he will call Campbell and Campbell tries to resolve the issue within his group before escalating it. (Campbell Dep., pp. 110-11).	Disputed. Campbell testified that he responds to line pulls daily and sometimes is directly notified of an issue by a TM. Whether a TL or a GL responds to the line pull, the process would be to try to address it yourself and if you cannot, escalate the

	issue. (Campbell Dep., pp. 110-11).
51. If Campbell is working on the Line making repairs and a safety issues arises, he deals with it or escalates it. (Campbell Dep., p. 107).	Disputed. Campbell testifies that it is not his decision whether or not to leave the line to handle issues that arise within his group. Campbell states that he has been instructed to escalate it. (Campbell Dep., p. 107).
52. Campbell can make the decision to make a repair himself or have one of his TLs do it. (Campbell Dep., p. 108).	Disputed. Campbell's testimony is that if a TM or TL is available, the TM or TL could also make the repair, not that it is his decision who makes the repair. (Campbell Dep., pp. 108-09).
53. If Campbell is making repairs, he retains his other GL responsibilities. (Campbell Dep., p. 109).	Undisputed.
54. As GL, at the close of the shift, Campbell prepares his turnover log. (Campbell Dep., p. 76).	Undisputed.
55. Campbell will also do any necessary repair activities, address any parts, topics, time and attendance issues and other administrative work. (Campbell Dep., p. 77).	Undisputed.
56. Campbell handles TM issues and conflicts in his group and decides when to involve higher management or Team Relations in an employee issue or conflict. (Campbell RFA #18).	Undisputed.
57. Campbell ensures that company policies and work rules are enforced in his group. (Campbell RFA #14).	Disputed. Campbell testifies that his job is to identify if a company policy or work rule is not being followed. Some issues must be escalated to management immediately. (Campbell. Dep., p. 94-95).
58. One of Campbell's responsibilities as GL is to identify if any of MBUSI's policies are being broken, if it is an issue he has been asked to correct he will, or if it is an issue he has been asked to escalate he will. (Campbell Dep., pp. 94-95).	Undisputed.
59. As to certain issues, Campbell has been trained to immediately stop them and as to others, he has been trained to escalate. (Campbell Dep., p. 95).	Undisputed.
60. There are situations that Campbell can handle and fix himself, and there are situations that he must escalate. (Campbell Dep., p. 96).	Undisputed.

61. Campbell has counseled TMs on performance, quality of work and conduct. (Campbell RFA #9).	Undisputed.
62. As GL, Campbell has counseled TMs for quality performance. (Campbell Dep., pp. 145-46).	Undisputed.
63. As GL, Campbell has counseled TMs for attendance violations. (Campbell Dep., p. 146).	Undisputed.
64. As GL, Campbell has counseled TMs to focus on their position. (Campbell Dep., p. 146).	Undisputed.
65. As GL, if Campbell determines a TM has reached a level to which a CPR would need to be issued, he will escalate the issue. (Campbell Dep., pp. 147-48).	Disputed. Objection: misstates testimony. Campbell states that there is a policy in place stating when a matter must be escalated. He does not have discretion to decide when to escalate an issue. (Campbell Dep., pp. 147-48).
66. Campbell also has the authority to initiate a CPR on a TM when he deems necessary. (Campbell RFA #10).	Disputed. Campbell must check with his AM before initiating a CPR. His AM makes the decision on whether or not a CPR should be drafted. (Campbell Dep., pp. 147-48).
67. As GL, if Campbell can correct an issue short of a CPR, he will engage in verbal coaching first. (Campbell Dep., p. 149).	Undisputed.
68. As GL, Campbell checks to make sure everyone is working as safely as possible, complying with policies and standards of MBUSI, and he monitors the environment for safety hazards. (Campbell Dep., p. 115, Campbell RFA #17).	Undisputed.
69. If an injury occurs, Campbell fills out a problem solving sheet. (Campbell Dep., pp. 116-17).	Undisputed.
70. On the 5 Why sheet, Campbell will help develop the root cause of the problem and countermeasures. (Campbell Dep., pp. 118-19).	Undisputed.
71. Campbell will communicate the countermeasures to his TMs. (Campbell Dep., p. 120).	Undisputed.
72. If a TM has work restrictions, Campbell makes sure they only work within those restrictions. (Campbell Dep., pp. 137-38).	Undisputed. TLs also monitor TMs to make sure they are only working within their restrictions. (Campbell Dep., pp. 137-38).
73. As GL, one of Campbell's responsibilities is to make sure that his TMs are trained to do the job correctly. (Campbell Dep., p. 120).	Disputed. Objection: misstates testimony. Campbell's responsibility is to know that the

	<p>TMs are trained on the stations that they are working in, but he does not train the TMs. (Campbell Dep., p. 120).</p>
<p>74. Campbell directs training and retraining in skills for TMs in his group, and he does so if he deems appropriate. (Campbell RFA #19).</p>	<p>Disputed.</p> <p>TLs and other TMs are responsible for training new TMs and determining what skill level the TM is. As a GL, Campbell's role is to review the trainer's documentation. (Campbell Dep., p. 123).</p>
<p>75. As GL, Campbell must initial off on the Circle of Skills every quarter which reflects the TM's training status. (Campbell Dep., p. 123).</p>	<p>Undisputed.</p>
<p>76. When a TM becomes a Level 3, Campbell must review and verify that the TM is at that level. (Campbell Dep., pp. 123-24).</p>	<p>Undisputed.</p>
<p>77. Campbell can recommend that his TMs receive more training. (Campbell Dep., p. 124).</p>	<p>Undisputed.</p>
<p>78. Campbell evaluates the performance of TMs and TLs in his group. (Campbell RFA #6).</p>	<p>Undisputed.</p>
<p>79. As GL, Campbell fills out a performance evaluation on each TM once a year. (Campbell Dep., pp. 141-42).</p>	<p>Undisputed.</p>
<p>80. Campbell assesses whether a TM's performance is satisfactory based on the criteria on the evaluation form. (Campbell Dep., p. 144).</p>	<p>Undisputed.</p>
<p>81. If Campbell does not give a TM an overall satisfactory rating, the TM cannot be promoted. (Campbell Dep., p. 142).</p>	<p>Disputed.</p> <p>Campbell's testimony states that two N throughout the evaluation would prevent a TM from receiving an overall satisfactory rating. Campbell does not claim to know whether or not this would allow for promotion. (Campbell Dep., p. 142).</p>
<p>82. If Campbell gives a TM or TL a not satisfactory rating in any area of the evaluation other than attendance, the TM or TL is not eligible for promotion. (Jones Decl. ¶ 33).</p>	<p>Disputed.</p> <p>Campbell does give his opinion as to whether TMs and TLs in his group are ready for promotion, but states that he believes that TMs and TLs can still be promoted regardless of his opinion as to their readiness for promotion. (Campbell Dep., p. 142-43).</p>
<p>83. Campbell provides his opinion as to whether TMs and TLs in his group are ready for promotion</p>	<p>Disputed.</p>

and his opinion is given consideration and normally is followed in determining if the TL or TM will be promoted. (Campbell Dep., pp. 142-44; Campbell RFA #7; Jones Decl. ¶¶ 31-32).	Campbell does give his opinion as to whether TMs and TLs in his group are ready for promotion, but states that he believes that TMs and TLs can still be promoted regardless of his opinion as to their readiness for promotion. (Campbell Dep., p. 142-43).
84. Campbell manages vacation scheduling, timekeeping and attendance tracking for the members of his group. (Campbell RFA #4).	Dispute. Objection: misstates testimony. Campbell does not “manage” vacation scheduling, timekeeping and attendance. As a GL, Campbell documents these things and reports out-of-standards requests or occurrences to management. (Campbell Dep., pp., 73-75).
85. Campbell manages attendance in his group and ensures that his group is properly staffed. (Campbell RFA #3).	Disputed. Objection: misstates testimony. Campbell does not manage attendance. Campbell checks the attendance call-in lines and documents attendance for the group. (Campbell Dep., p. 73-74).
86. As GL, Campbell keeps track of his team's vacation. (Campbell Dep., p. 74).	Undisputed.
87. If a vacation request is within standard, Campbell as GL may approve it. (Campbell Dep., pp. 136-37).	Undisputed.
88. Campbell reviews the guidelines to see if the vacation request is within standard and if it is not within standard, he may deny it. (Campbell Dep., p. 137).	Undisputed.
89. As GL, Campbell will move people within his Group daily. (Campbell Dep., p. 154).	Disputed. Objection: misstates testimony. Campbell states that as a GL, he was told that he did not have the authority to move people within his group by AM, Ron Patton. (Campbell Dep., p. 153-54).
90. As a GL, Campbell has received such training as civil treatment, corporate policies and guidelines, ergonomics, group leader communication, human resource training, labor relations training, record management training, training on the role of the GL at MBUSI, and situational leadership training. (Campbell Dep., pp. 60-61; Campbell Dep. Ex. 2).	Disputed. Objection: misstates testimony. Campbell states that some of the courses were taken prior to his promotion to GL. (Campbell Dep., p. 60).
91. Campbell attended Group Leader Self Sufficiency training which included topics relevant to the GL positions, including time and attendance,	Undisputed.

and legal issues. (Campbell Dep., pp. 54-55).	
92. The Group Leader Self Sufficiency program lasted a period of eight weeks. (Campbell Dep., p. 55).	Undisputed.
93. As a GL, Campbell was trained on his responsibilities for handling severe weather or evacuation situations. (Campbell Dep., p. 58).	Undisputed.
94. As GL, Campbell is evaluated on leadership competency. (Campbell Dep., p. 158).	Undisputed.
95. The MBUSI Group Leader job description contains a general description of the GL and their purpose. (Campbell Dep., pp. 155-56; Campbell Dep. Ex. 18).	Undisputed.
96. The MBUSI Group Leader job description describes the essential functions of the GL position. (Campbell Dep., pp. 156-57).	Undisputed.
97. As GL, Campbell tries to accomplish the roles and responsibilities listed in the Roles and Responsibilities Card. (Campbell Dep., p. 152; Campbell Dep. Ex. 17).	Undisputed. Campbell states that as a GL, he has never developed an annual plan. In fact, some years, he has not even received a copy of the annual plan from his AM. (Campbell Dep., p. 154-55)
98. Campbell believes he is given a limited opportunity to manage his group because he cannot approve or disapprove overtime, he has a set of standards pursuant to which he can approve or disapprove vacation, he does not decide the build number for the day, or whether he can stop the production line over a certain period of time which is over a few minutes and he cannot decide whether to pass a quality defect without escalating. (Campbell Dep., p. 151).	Undisputed.
B. TIMOTHY CRAWFORD	
99. Timothy Crawford ("Crawford") began employment at MBUSI on July 8, 1996 as a TM in the Paint Department. (Crawford Dep., pp. 14, 25). ³	Undisputed.
100. Crawford then was promoted to TL in Assembly on the Trim 1 Line and he received a 5% pay raise. (Crawford Dep., pp. 27-29).	Undisputed.
101. After three years as a TL on the Trim 1 Line,	Undisputed.

³ The Deposition of Timothy Crawford and exhibits to the deposition are attached as Ex. 173 to MBUSI's Evidentiary Submission (Volume 14).

Crawford was promoted to GL for the Trim 1 Line from January 2002 to February 2004. (Crawford Dep., pp. 31-32, 47).	
102. Crawford was next GL over the CDC tent from February 2004 until November 2004. (Crawford Dep., p. 47).	Undisputed.
103. Crawford then became GL for the Trim 1 Line in Plant 2 from November 2004 through August 2008. (Crawford Dep., p. 47).	Undisputed.
104. When Crawford was initially in Trim 1 Plant 2, he had thirty to thirty-five TLs in his group, including four teams. (Crawford Dep., pp. 54-55).	Disputed. Objection: misstates testimony. Crawford did not “have” thirty to thirty-five TLs in his group. There were thirty to thirty-five TLs in Trim 1 Plant 2. (Campbell Dep., p. 54-55).
105. The Trim 1 Line is over the size of football field. (Crawford Dep., p. 56).	Undisputed.
106. From August 2008 through July 2009, Crawford was mainly either off work or on light duty due to a foot injury. (Crawford Dep., pp. 48-49).	Undisputed.
107. During that time, from January to February 14, 2009, Crawford was GL for the Trim 1 West Line which included a group of approximately thirty persons. (Crawford Dep., pp. 49-50).	Undisputed.
108. During the January to February 2009 time period, MBUSI was reorganizing stations due to the number of TMs who had left the Company so Crawford was observing the performance of TMs, securing input from TMs about how to make the stations work better, and working on a station for up to 25% of the day to determine how to redo the station. (Crawford Dep., pp. 51-53).108.	Undisputed.
109. In July 2009, Crawford became GL for the Trim 2 Line in Plant 2 until January of 2010. (Crawford Dep., pp. 47-48, 53-54).	Undisputed.
110. When Crawford was GL over the Trim 2 group, his group had three teams, seventeen TMs and included an area 40 yards in length. (Crawford Dep., pp. 57-58).	Disputed. Objection: misstates testimony. Trim 2 was not Crawford’s group. Crawford worked on Trim 2 as a GL.
111. In January 2010, Crawford returned as GL over the Trim 1 Line. (Crawford Dep., p. 54).	Undisputed.
112. As GL of the Trim 1 Line, Crawford's group had anywhere from thirty-nine to forty-four TMs	Disputed. Objection: misstates testimony.

and six teams. (Crawford Dep., p. 58).	Trim 1 was not Crawford's group. Crawford worked on Trim 1 as a GL.
113. As GL, Crawford has always received a base salary every week that he worked and he earned as least \$455.00 per week in salary. (Crawford Dep., p. 39; Crawford RFA #41). ⁴	Undisputed.
114. In March, 2010, Crawford applied for an AM position at MBUSI in Operations in the Finance Department and described his daily job responsibilities as GL as entering payroll, observing work, feeding back information up line to his supervisor, working with other people in his core group, working with other GLs, working with the Process Engineer doing setups, dealing with issues, collecting data or information and providing feedback. (Crawford Dep., pp. 18-19).	Undisputed.
115. Indeed, Crawford described his primary duties as group leader as follows: My job as group leader is to monitor the jobs of the TL and team leaders on the line and make sure they are in compliance with the standards and the policies that the Company has established. (Crawford Dep., pp. 144-45).	Undisputed.
116. Crawford spends most of his time as GL performing these tasks because even when he is checking a car at the end of the Line, he is verifying that standards are being maintained or kept as he is when he is monitoring reports at his desk. (Crawford Dep., p. 145).	Disputed. Testimony is unclear. Crawford states that he spends one-third of his time performing these tasks. (Crawford Dep., p. 145).
117. Crawford supervises the TLs and TMs in his group. (Crawford RFA #1).	Disputed. Crawford has been told that he is responsible for minimizing scrap within his group, but has not been given a budget by management. (Crawford Dep., p. 106). Crawford cannot issue a CPR without the AM's approval and cannot present the CPR without HR present. (Crawford Dep., p. 104).

⁴ Crawford Responses to Requests for Admission are attached as Ex. 174 to MBUSI's Evidentiary Submission (Volume 14).

	Campbell does not manage manning levels or allocation of TMs. (Crawford Dep., p. 139).
118. A Manager or AM is not always present in Crawford's group, and he leads his group independently of his Manager or AM. (Crawford RFA #33).	Undisputed.
119. Crawford gives work directions and assignments to the members of his group. (Crawford RFA #2).	Undisputed.
120. Crawford directs his group in meeting the Company's objectives for safety, product quality, accuracy, productivity, cost reduction, housekeeping, efficiency, training and team harmony. (Crawford RFA #5).	Undisputed.
121. Crawford leads his group in meeting company standards; he leads change in his group; and he uses leadership skills in his GL position. (Crawford RFA ##25, 26 & 28).	Undisputed.
122. Crawford shares his knowledge and experience with his group. (Crawford RFA #30).	Undisputed.
123. Crawford shows and supports top performance in his group. (Crawford RFA #29).	Objections: Vague, Ambiguous, Unintelligible.
124. Crawford uses his best judgment in performing all of his GL job duties. (Crawford RFA #23).	Undisputed.
125. Crawford fulfills all of the roles and responsibilities of his GL position. (Crawford RFA #24).	Disputed. Crawford does not manage manning levels or allocation of TMs, he only reports on those things. (Crawford Dep., p. 139). Crawford testifies that technical problem solving is done with the entire core group and he is not solely responsible for that. (Crawford Dep., pp. 139-40).
126. As GL, Crawford received training on dealing with personalities, safety training and also attended Group Leader Academy which lasted two weeks. (Crawford Dep., p. 40).	Undisputed.
127. Crawford also participated in Group Leader Self Sufficiency training in which they went from department to department to determine who were their contacts and the different departmental functions. (Crawford Dep., pp. 42-43).	Undisputed.
128. Every month or so Crawford will attend a lunch	Undisputed.

box training session with the Human Resource Department where they will discuss policies and procedures. (Crawford Dep., pp. 44, 61).	
129. Crawford initiates, facilitates and monitors problem solving in his group. (Crawford RFA #12).	Crawford testifies that technical problem solving is done with the entire core group and he is not solely responsible for that. (Crawford Dep., pp. 139-40).
130. Crawford ensures that production and quality goals are met in his group. (Crawford RFA ##13 & 22).	Disputed. Crawford cannot ensure that production and quality goals are met because he does not have the final say as far as how those goals should be obtained. Crawford's AM decides how goals should be obtained. (Crawford Dep., p. 132).
131. Crawford initiates continuous improvement activities in his group and leads the implementation of initiatives in his group. (Crawford RFA #16).	Undisputed.
132. Throughout the day, Crawford observes his TMs and gives them feedback, correcting them and documenting their performance. (Crawford Dep., pp. 134-36).	Undisputed.
133. Crawford observes his TMs and makes sure they are doing the processes in accordance with the SMPs and JESs and that the equipment and the parts are not being damaged. (Crawford Dep., pp. 106-07).	Undisputed.
134. If Crawford notices a TM performing a process not according to the SMP, he will talk with them. (Crawford Dep., pp. 82-83).	Disputed. Objection: misstates testimony. Crawford testifies that if he sees a TM performing a process not according to the SMP, he will first ask the TM why he/she is performing the process that way. If the TM has a reasonable explanation, Crawford will discuss this with the TL and GL counterpart. Crawford will feed this information back to the AM so that the AM can make a determination as to whether or not to change the SMP. (Crawford Dep., p. 82-83).
135. Crawford will prepare feedback forms which he uses to address multiple quality issues with TMs and review it with them. (Crawford Dep., pp. 123-24).	Undisputed.
136. While walking through his group during the day, Crawford checks to make sure his TMs have completed their 5S responsibilities. (Crawford Dep.,	Disputed. Objection: misstates testimony. When asked if he did 5S checks throughout the

p. 81).	day, Crawford responds that he does walk around throughout the day. Crawford did not testify that he is making sure “his” TMs have completed their 5S responsibilities. (Crawford Dep., p. 81).
137. As GL, Crawford also makes mutilation checks to make sure his TMs are not wearing anything that could mutilate the car. (Crawford Dep., p. 81).	Undisputed.
138. Crawford spends about half the shift checking cars for quality to make sure his TMs are following the SMPs and to determine if any modifications are required. (Crawford Dep., pp. 84-85, 89).	Disputed. Objection: misstates testimony. Crawford testified that he was directed by his AM, Philip Bradford, to stand at the end of his line and check quality. Crawford explained that there is not a quality person on Trim 1, so he is responsible for checking quality. (Crawford Dep., pp. 84-85).
139. When standing at the end of the Line checking cars and when he is walking the Line, Crawford is trying to make sure his TMs are doing what they are supposed to be doing, that they are following the SMPs, he will feed back any issues and he is checking to see that his TMs are productive and efficient in their job. (Crawford Dep., pp. 89, 137-38).	Undisputed. Crawford testified that he was directed by his AM, Philip Bradford, to stand at the end of his line and check quality. Crawford explained that there is not a quality person on Trim 1, so he is responsible for checking quality. (Crawford Dep., pp. 84-85).
140. As GL, about once a month, Crawford may have to perform a repair after shift that may take him forty-five minutes to an hour and a half. (Crawford Dep., p. 75).	Undisputed.
141. Crawford evaluates the performance of TMs and TLs in his group. (Crawford RFA #6).	Undisputed.
142. As GL, Crawford annually completes an evaluation form on TMs and TLs in his group. (Crawford Dep., p. 107).	Undisputed. Crawford describes that although he physically completes the evaluation form, many areas of the evaluation include the opinions of the TL and AM that work with the TM. (Crawford Dep., pp. 107-08).
143. Crawford describes the TM's performance with regard to certain performance criteria and evaluates their performance as satisfactory or not satisfactory. (Crawford Dep., pp. 107-08).	Undisputed. Crawford describes that although he physically completes the evaluation form, many areas of the evaluation include the opinions of the TL and AM that work with the TM. (Crawford Dep., pp. 107-08).

144. If Crawford gives a TM or TL a not satisfactory rating in any area of the evaluation other than attendance, the TM or TL is not eligible for promotion. (Jones Decl. ¶ 33).	Undisputed.
145. Crawford provides his comments on any position development steps the TM or TL can take to improve their performance in their role. (Crawford Dep., p. 108).	Undisputed.
146. Crawford will state whether the TM or TL needs development or is ready to advance and his opinion is given consideration and normally is followed in determining if the TL or TM will be promoted. (Crawford Dep., pp. 108-09; Crawford RFA #7; Jones Decl. ¶¶ 31-32).	Undisputed.
147. As GL, Crawford reviews the rotation schedules to ensure that there is a balance of TMs trained in each station. (Crawford Dep., p. 101).	Disputed. Objection: misstates testimony. Crawford testifies that he does review the rotation schedule, but states that he does so to make sure that the rotation is fair. (Crawford Dep., p. 101).
148. Crawford will get with his TLs and let them adjust manpower if necessary if a TM leaves during the day. (Crawford Dep., pp. 105-06).	Undisputed.
149. Crawford manages vacation scheduling, timekeeping and attendance tracking for the members of his group. (Crawford RFA #4).	Disputed. Crawford only records these items. (Crawford Dep., p. 104).
150. Crawford manages attendance in his group and ensured that his group is properly staffed. (Crawford RFA #3).	Disputed. Objection: misstates testimony. Crawford only records attendance. (Crawford Dep., p. 104).
151. Crawford approves vacation based on the vacation guidelines. (Crawford Dep., p. 104).	Undisputed.
152. Crawford records attendance daily and keeps up with an attendance calendar and attendance occurrences. (Crawford Dep., p. 103).	Undisputed.
153. When a TM has reached a certain occurrence level for attendance, Crawford drafts a CPR and submits it to his AM and Human Resources for approval. (Crawford Dep., p. 103).	Undisputed.
154. After the CPR is approved, Crawford presents it to the TM with Human Resources present. (Crawford Dep., p. 104).	Undisputed.
155. Crawford ensures that Company policies and	Disputed.

work rules are enforced in his group. (Crawford RFA #14).	Crawford does not ensure, but only monitors the group to see if they are following company policies and work rules. (Crawford Dep., pp. 144-45).
156. When Crawford observes a TL violating a standard of conduct, he addresses it. (Crawford Dep., p. 119).	Undisputed. Crawford states that he will address the issue with the TM, but he also speaks to the TL to see if they were aware of the situation. Crawford also must inform his AM of the situation. (Crawford Dep., pp. 119-20).
157. If Crawford believes discipline is necessary for a TM, it is his responsibility to report that to the AM and Human Resources. (Crawford Dep., pp. 121-22).	Undisputed.
158. Crawford has counseled TMs on performance, quality of work and conduct. (Crawford RFA #9).	Undisputed.
159. Crawford also has the authority to initiate a CPR on a TM when he deems it necessary. (Crawford RFA #10).	Undisputed. Crawford may initiate the CPR, but the CPR cannot be issued to the TM without management approval. (Crawford Dep., p. 103).
160. Crawford handles TM issues and conflicts in his group and decides when to involve higher management or Team Relations in an employee issue or conflict. (Crawford RFA #18).	Undisputed.
161. Crawford drafts a 5 Why form if there is a quality issue that arises from his area that reaches CPA. (Crawford Dep., pp. 99-100).	Undisputed. Crawford gathers information and completes the first draft of the 5 Why form, which must then be approved by the AM and Manager. (Crawford Dep., pp. 99-100).
162. Crawford will collect the data, come up with countermeasures and submit the form for approval. (Crawford Dep., p. 100).	Undisputed.
163. Crawford will make sure that the TMs are complying with the countermeasures. (Crawford Dep., pp. 100-01).	Undisputed.
164. Crawford ensures that his group is working safely and he monitors the environment for safety hazards. (Crawford RFA #17).	Disputed. Crawford looks for potential safety issues that may appear on the line, but does not and cannot "ensure" that the group is working safely.

	(Crawford Dep., p. 89).
165. As GL, Crawford looks for any potential safety issues that may appear on the Line. (Crawford Dep., p. 89).	Undisputed.
166. When Crawford finds a potential safety issue, he will discuss it with his TMs and TLs and contact whoever needs to be contacted to help resolve the issue. (Crawford Dep., pp. 90-91).	Undisputed.
167. If there is a safety incident, Crawford will interview the TM, document what the TM said and then come up with countermeasures with the TM and TL and then submit a 5 Why form to his AM for approval. (Crawford Dep., pp. 94-95).	Undisputed.
168. Crawford will communicate any countermeasures to his TMs. (Crawford Dep., p. 99).	Undisputed.
169. With respect to TMs who have restrictions, Crawford verifies the restrictions and makes sure that the stations in which Medical has approved for the TM to work are the only stations in which they work. (Crawford Dep., pp. 104-05).	Undisputed. Crawford, along with the TL, make sure that the TM only works in approved stations. (Crawford Dep., pp. 104-05).
170. Crawford directs training and retraining in skills for TMs in his group, and he does so if he deems appropriate. (Crawford RFA #19).	Disputed. Crawford can suggest that a TM be retrained. Prior to suggesting retraining, Crawford would talk to the TM and TL to see if they feel I would be beneficial. (Crawford Dep., pp. 102-03).
171. Crawford observes the performance of TMs throughout the training process to make sure the training process is moving along appropriately. (Crawford Dep., p. 102).	Undisputed.
172. Crawford signs off on their training before a TM is given a Level 3 on the Circle of Skills. (Crawford Dep., p. 102).	Undisputed.
173. Every quarter Crawford verifies the Circle of Skills form for TMs in his group. (Crawford Dep., p. 102).	Undisputed.
174. Crawford can send a TM back for retraining if they are having trouble with the processes. (Crawford Dep., pp. 102-03).	Disputed. Objection: misstates testimony. Crawford can suggest that a TM be retrained. Prior to suggesting retraining, Crawford would talk to the TM and TL to see if they feel I would be beneficial. (Crawford Dep., pp. 102-03).
175. Crawford consults with the other GL and his Planning and Process Engineer when revising SMPs	Disputed. Objection: misstates testimony.

and JESs. (Crawford Dep., pp. 130-31).	Crawford does not “consult” with the other GL and the Planning and Process Engineer when revising SMPs and JESs. Crawford, the other GL and the Planning and Process Engineer all work together to revise the SMPs and JESs. (Crawford Dep., pp. 130-31).
176. When Crawford comes in as GL, he makes a visual check of his Line to make sure all of the tools are in place according to the SMPs, reads the turnover log, reads his emails and anything else that may be on his desk that needs his attention, checks for call-in, checks for attendance issues that are out of standard, and checks for any communications he needs to make to his TMs. (Crawford Dep., pp. 60, 67-68).	Undisputed. Objection as to the use of the phrase “his line.” The line is does not belong to Crawford.
177. As group leader, Crawford typically updates the SQDCM boards in the morning before his shift startup meeting. (Crawford Dep., pp. 72-73).	Undisputed.
178. As GL, Crawford regularly attends the daily startup meeting before the shift with the AM and the GLs for the Trim side. (Crawford Dep., p. 59).	Undisputed.
179. Crawford conducts the startup meeting for his group at the start of the shift each day. (Crawford Dep., p. 62).	Undisputed. This meeting lasts between three and five minutes. (Crawford Dep., p. 62).
180. At that meeting, Crawford communicates to his TMs information about safety, any feedback regarding quality issues, feedback about their numbers of cars delivered, their FTC, how many line stops they had and how long the line was down and any toolbox information. (Crawford Dep., pp. 62-63).	Undisputed.
181. The first hour of the shift, Crawford goes down the Line and checks TMs, greets TMs and looks at processes. (Crawford Dep., p. 86).	Undisputed. Crawford is also checking the cars for quality during this first hour. (Crawford Dep., p. 86).
182. Crawford tries to promote team harmony to make sure everyone is getting along and being treated fairly in his group. (Crawford Dep., p. 138).	Undisputed.
183. As GL, if Crawford has issues, he will contact the appropriate person including another GL, Maintenance or Engineering. (Crawford Dep., p. 139-40).	Objections: Vague, Ambiguous, Unintelligible. What “issues” are Defendants referencing?
184. At the end of the shift, Crawford goes where	Undisputed.

his TMs are before they leave so they can raise any issues with him, he prepares his turnover log, does payroll, does evaluations if they need to be updated, does any paperwork that needs to be performed and makes sure everything is ready for the next shift. (Crawford Dep., pp. 74-75).	
185. When Crawford was GL over the Trim 2 Line, they would have end of shift meetings with the AM and the GLs. (Crawford Dep., p. 64).	Undisputed.
186. Crawford typically leaves within an hour after the shift is over after completing various other administrative duties. (Crawford Dep., pp. 78-79).	Undisputed.
C. MICHAEL CROWLEY	
187. Michael Crowley ("Crowley") <u>admitted in Response to a Request for Admission that he was properly classified under the FLSA as an exempt employee.</u> (Crowley RFA #43). ⁵	Undisputed.
188. Crowley began employment at MBUSI in 2002 as a TM in Plant 1 on the Trim 1 Line. (Crowley Dep., pp. 12, 17). ⁶	Undisputed.
189. In 2004, when Plant 2 opened, Crowley moved to the Trim 1 Line in Plant 2. (Crowley Dep., p. 17).	Undisputed.
190. Crowley worked on the Trim 1, Line Plant 2 for approximately two years, was promoted to TL and he received an increase in pay. (Crowley Dep., pp. 17, 19).	Undisputed.
191. After about one year as a TL on the Trim 1 Line, Crowley moved to the Trim 6 Line in Plant 2. (Crowley Dep., p. 17-18).	Undisputed.
192. Around April 28, 2008, Crowley was promoted to GL over the Trim 6 Line in Plant 2. (Crowley Dep., p. 20).	Undisputed.
193. As GL on the Trim 6 Line, Crowley's group had three TLs and around twenty TMs. (Crowley Dep., p. 21).	Disputed. Objection: misstates testimony. Trim 6 Line was not Crowley's group. Crowley worked as a GL on the Trim 6 Line. (Crowley Dep., p. 21).
194. In the summer of 2010, Crowley moved to GL	Undisputed.

⁵ Crowley Responses to Requests for Admission are attached as Ex. 175 to MBUSI's Evidentiary Submission (Volume 14).

⁶ The Deposition of Michael Crowley and exhibits to the deposition are attached as Ex. 176 to MBUSI's Evidentiary Submission.

for the Trim 3 Line in Plant 2. (Crowley Dep., p. 18).	
195. Crowley's group on the Trim 3 Line includes three TLs and eighteen TMs. (Crowley Dep., pp. 21-22).	Disputed. Objection: misstates testimony. Trim 3 Line was not Crowley's group. Crowley worked as a GL on the Trim 3 Line. (Crowley Dep., p. 21).
196. Crowley performed the same GL job duties on the Trim 3 and Trim 6 Lines. (Crowley Dep., pp. 83-85).	Undisputed.
197. As a GL at MBUSI, Crowley earns at least \$455.00 per week in salary. (Crowley RFA #41).	Undisputed.
198. Crowley supervises the TLs and TMs in his group. (Crowley RFA #1).	Disputed. Crowley testifies that he does not supervise the TLs and TMs that work in the group with him. (Crowley Dep., p. 24).
199. As GL, Crowley oversees the operations of his group. (Crowley Dep., p. 24).	Undisputed. Objection as to the use of the phrase "his group."
200. A Manager or AM is not always present in his group, and Crowley leads his group independently of his Manager or AM. (Crowley RFA #33).	Undisputed.
201. Crowley gives work directions and assignments to the members of his group. (Crowley RFA #2).	Undisputed. As a GL, Crowley receives work direction from management during his 6 a.m. start up meeting. Crowley then passes this information on to the TMs and TLs in the group. (Crowley Dep., pp. 66-67).
202. Crowley makes decisions about his group and carries out his plans for the group. (Crowley RFA # 35).	Disputed. Crowley testifies that he does not supervise the TLs and TMs that work in the group with him. (Crowley Dep., p. 24). Crowley testifies that he only records attendance. (Crowley Dep., p. 85). Crowley testifies that one of his primary duties is to check the cars for quality. (Crowley Dep., pp. 140-42). Crowley testifies that most issues he would escalate, but if a TM is having trouble with a

	tool he would try to get that fixed. (Crowley Dep., pp. 51-53).
203. Crowley directs his group in meeting the company's objectives for safety, product quality, accuracy, productivity, cost reduction, housekeeping, efficiency, training and team harmony. (Crowley RFA #5).	Undisputed.
204. Crowley leads his group in meeting company standards; he leads change in his group; and he uses leadership skills in his GL position. (Crowley RFA ##25, 26 & 28).	Undisputed.
205. Crowley shares his knowledge and experience with his group. (Crowley RFA #30).	Undisputed.
206. His duties differ from those performed by the TMs in his group. (Crowley RFA #34).	Undisputed.
207. Crowley initiates, facilitates and monitors problem solving in his group. (Crowley RFA #12).	Undisputed. Crowley estimates that he spends approximately 1% of his time initiating problem solving. (Crowley Dep., p. 121).
208. As GL, Crowley initiates problem solving. (Crowley Dep., p. 120).	Undisputed. Crowley estimates that he spends approximately 1% of his time initiating problem solving. (Crowley Dep., p. 121).
209. Crowley ensures that production and quality goals are met in his group. (Crowley RFA ##13 & 22).	Undisputed.
210. Crowley is held accountable for his group meeting the FTC goal for the day. (Crowley Dep., p. 88).	Undisputed.
211. Crowley initiates continuous improvement activities in his group and leads the implementation of initiatives in his group. (Crowley RFA #16).	Undisputed.
212. As GL, Crowley initiates improvement in his group. (Crowley Dep., p. 47).	Undisputed.
213. Crowley shows and supports top performance in his group. (Crowley RFA #29).	Objections: Vague, Ambiguous, Unintelligible.
214. Crowley uses his best judgment in performing all of his GL job duties. (Crowley RFA #23).	Undisputed.
215. Crowley fulfills all of the roles and responsibilities of his GL position. (Crowley RFA #24).	Undisputed.
216. Crowley agrees that leadership skills are	Undisputed.

important for a GL. (Crowley Dep., p. 45).	Crowley testifies that leadership skills are important for both the TL and GL positions. (Crowley Dep., p. 45).
217. Crowley agrees that communication skills are important for a GL and as a GL, Crowley spends a lot of time communicating with his TMs in his group. (Crowley Dep., p. 46).	Undisputed. Crowley testifies that communication skills are important for both the TL and GL positions. (Crowley Dep., p. 46).
218. If there is a change in the process, Crowley communicates that to his group and makes sure the group is following the new process. (Crowley Dep., pp. 46-47).	Undisputed.
219. Crowley's primary duty as a GL is to observe his TMs to make sure they are following the SMPs and JESs to build a quality vehicle. (Crowley Dep., pp. 140-42).	Disputed. Objection: misstates testimony. Crowley testifies that one of his primary duties is to check the cars for quality. (Crowley Dep., pp. 140-42).
220. Crowley does make sure that his TMs are following the SMPs and JESs. (Crowley Dep., pp. 26-27, 133).	Undisputed.
221. As GL, Crowley makes sure that the TMs in his group are following MBUSI's standards when they build the vehicle. (Crowley Dep., p. 27).	Undisputed.
222. As GL, Crowley becomes aware of quality issues because the people assigned to check quality at the end of the Line will pull the Line. (Crowley Dep., pp. 28-29).	Undisputed.
223. Crowley will go to the Line pull, determine what is the problem, and how to address the problem. (Crowley Dep., p. 29).	Undisputed.
224. When Crowley responds to a Line pull, it includes assessing the defect, feeding information back to the TM and containing the problem and this takes about fifty percent of his day. (Crowley Dep., p. 49).	Undisputed.
225. If Crowley determines that a TM caused a quality defect, he will feed it back to the TM. (Crowley Dep., p. 36).	Undisputed.
226. Crowley does this so the TM hopefully will not make the mistake again. (Crowley Dep., p. 36).	Undisputed.
227. Crowley also will contain the problem by walking the issue back and determining with which vehicle the defect began and where it ended.	Undisputed.

(Crowley Dep., pp. 36-37).	
228. In determining the root cause of a quality issue, Crowley will gather data to help figure out the root cause and he will have input into developing a countermeasure. (Crowley Dep., pp. 79-80).	Disputed. Objection: misstates testimony. Crowley testifies that both he and the AM investigate quality issues in order to determine a root cause. (Crowley Dep., pp. 79-80).
229. Crowley will observe his group to make sure they are performing the countermeasure. (Crowley Dep., pp. 80-81).	Undisputed.
230. Crowley keeps a TM quality file on each TM and tracks their quality defects. (Crowley Dep., pp. 37-38).	Undisputed.
231. If a TM has too many quality defects, Crowley initiates a CPR and it must be approved by his AM and HR. (Crowley Dep., p. 38).	Undisputed.
232. After the CPR has been approved, Crowley sits down and goes over it with the TM. (Crowley Dep., pp. 38-39).	Undisputed.
233. Crowley handles TM issues and conflicts in his group and decides when to involve higher management or Team Relations in an employee issue or conflict. (Crowley RFA #18).	Disputed. Crowley testifies that he has never had any conflicts between TMs or TLs during his time as a GL. (Crowley Dep., pp. 50-51).
234. When TMs bring issues to Crowley's attention, he tries to resolve them or escalates them to the appropriate person. (Crowley Dep., pp. 51-53).	Undisputed. Crowley testifies that most issues he would escalate, but if a TM is having trouble with a tool he would try to get that fixed. (Crowley Dep., pp. 51-53).
235. Crowley ensures that company policies and work rules are enforced in his group. (Crowley RFA #14).	Undisputed.
236. Crowley counsels TMs on performance, quality of work and conduct. (Crowley RFA #9).	Undisputed.
237. Crowley has the authority to initiate a CPR on a TM when he deems necessary. (Crowley RFA #10).	Disputed. CPRs must be approved by management before they are issued to a TM or TL. (Crowley Dep., p. 173).
238. Crowley directs training and retraining in skills for TMs in his group, and he does so if he deems appropriate. (Crowley RFA #19).	Undisputed.
239. Crowley will review and sign off on a training log. (Crowley Dep., p. 169; Crowley Dep. Ex. 23).	Undisputed.

240. Crowley tracks SQDCM every day. (Crowley Dep., p. 76).	Undisputed.
241. Crowley ensures that his group is working safely and he monitors the environment for safety hazards. (Crowley RFA #17).	Undisputed.
242. Crowley makes sure that the TMs in his group are wearing their PPE. (Crowley Dep., p. 85).	Undisputed.
243. Crowley manages attendance in his group and ensures that his group is properly staffed. (Crowley RFA #3).	Disputed. Crowley testifies that he only records attendance. (Crowley Dep., p. 85).
244. Crowley manages vacation scheduling, timekeeping and attendance tracking for the members of his group. (Crowley RFA #4).	Disputed. Crowley testifies that he only records vacation scheduling, time keeping and attendance. (Crowley Dep., pp. 84-85).
245. Crowley is responsible for submitting time for the TMs in his group. (Crowley Dep., p. 70).	Undisputed.
246. Crowley will keep up with a TMs' attendance is they are out on vacation or sickness or if they are late. (Crowley Dep., pp. 71-72).	Undisputed.
247. Crowley keeps an attendance file on each TM in his group. (Crowley Dep., p. 73).	Undisputed.
248. If a TM has too many absences, Crowley initiates a CPR and sends it to upper management and HR for approval, and upon approval he sits down with the TM with the CPR. (Crowley Dep., p. 74).	Undisputed.
249. As GL, Crowley has to make sure he has enough manpower in order to cross train TMs. (Crowley Dep., p. 166).	Undisputed.
250. Crowley evaluates the performance of TMs and TLs in his group. (Crowley RFA #6).	Disputed. Crowley testifies that although he may be the one to fill out the evaluation, he often consults with his AM while doing so because his AM has good ideas regarding how a TM could improve. (Crowley Dep., pp. 167-68).
251. On a performance evaluation, Crowley puts in how the TM measures up against the criteria based on his observations and rates the TM as satisfactory or not satisfactory. (Crowley Dep., pp. 159-60).	Undisputed.
252. Crowley puts comments in the current position development steps about things that he would like	Disputed. Objection: misstates testimony.

them to do. (Crowley Dep., p. 160).	Crowley testifies that these comments are either something he, the AM or HR would like the TM to do. (Crowley Dep., p. 160).
253. On the performance evaluation, Crowley rates whether the TM or TL is ready for promotion to the next level and his opinion is given consideration and normally is followed in determining if the TM or TL will be promoted. (Crowley Dep., p. 161; Crowley RFA #7; Jones Decl. ¶¶ 31-32).	Undisputed. The final evaluation is a product of Crowley's opinion, as well as the AM and possibly HR. (Crowley Dep., pp. 160, 167-68).
254. A TM must have an overall satisfactory evaluation in order to progress to the next level. (Crowley Dep., pp. 161-62).	Undisputed. The final evaluation is a product of Crowley's opinion, as well as the AM and possibly HR. (Crowley Dep., pp. 160, 167-68).
255. If Crowley gives a TM or TL a not satisfactory rating in any area of the evaluation other than attendance, the TM or TL is not eligible for promotion. (Jones Decl. ¶ 33).	Undisputed. The final evaluation is a product of Crowley's opinion, as well as the AM and possibly HR. (Crowley Dep., pp. 160, 167-68).
256. Before his shift, Crowley reads his shift logs to learn what went on during the previous shift. (Crowley Dep., p. 64).	Undisputed.
257. A normal part of Crowley's pre-shift routine is to check 5S on his Line. (Crowley Dep., p. 96).	Undisputed. Objection as to the use of the phrase "his Line."
258. Crowley also updates the group's performance board pre-shift, updates the attendance calendar, checks the number of vehicles in the buffer, and updates the shop attendance board. (Crowley Dep., pp. 96-97).	Undisputed.
259. Crowley spends about forty-five minutes before his shift and after his shift and twenty-five minutes during his shift completing shift logs and complying information for shift logs. (Crowley Dep., pp. 65-66).	Undisputed.
260. Crowley attends a pre-shift start up meeting with the AM and GLs for about ten to fifteen minutes at which they get direction for the day. (Crowley Dep., pp. 66-67).	Undisputed.
261. Crowley has a start up meeting with his group that he leads at which he addresses issues of quality or parts or other problems they may run into during the day. (Crowley Dep., pp. 67-68).	Undisputed.
262. After his shift, Crowley will complete the shift log for the next GL. (Crowley Dep., pp. 64-65).	Undisputed.

263. Fifty percent of Crowley's day is spent responding to Line pulls by the TMs in his group. (Crowley Dep., p. 33).	Undisputed.
264. Ten percent of Crowley's day is spent responding to radio calls and radios are carried by Engineering, Maintenance, AMs, Managers and GLs. (Crowley Dep., p. 32).	Undisputed.
265. Crowley spends about five percent of his day looking for improvements, initiating improvements or following up on improvements. (Crowley Dep., p. 48).	Undisputed.
266. Crowley spends about five percent of his day talking to other GLs or engineers or Maintenance. (Crowley Dep., pp. 69-70).	Undisputed.
267. Crowley spends about five percent of his day dealing with problems or issues that TMs bring to his attention. (Crowley Dep., p. 57).	Undisputed.
268. Crowley spends about one percent of his day working on improvement ideas. (Crowley Dep., p. 62).	Undisputed.
269. Crowley spends about one percent of his day tracking attendance and vacation. (Crowley Dep., p. 76).	Undisputed.
270. As GL, Crowley may do repair work on a defect on a vehicle or escalate it, but he does not do this everyday. (Crowley Dep., pp. 175-76).	Undisputed. Crowley testifies that although he does not work on repairs everyday, he fixes about 60% of repairs and escalates the other 40%. (Crowley Dep., pp. 175-76).
D. ROBERT FISHER	
271. Robert Fisher ("Fisher") began employment at MBUSI in October, 1996 as a TM on the Engine Chassis Line in the Assembly Shop. (Fisher Dep., pp. 18, 28). ⁷	Undisputed.
272. In early 1997, Fisher was promoted to TL on the Engine Chassis Line and around 2005, he moved to Plant 2 as a TL on the Engine Line. (Fisher Dep., pp. 29, 32).	Undisputed.
273. In October, 2006, Fisher was promoted to GL for the Engine Line in Plant 2. (Fisher Dep., pp. 33,	Undisputed.

⁷ The Deposition of Robert Fisher and exhibits to the deposition are attached as Ex. 177 to MBUSI's Evidentiary Submission (Volume 14).

45; Fisher Dep. Ex. 1).	
274. As GL over the Engine Line, Fisher's group had approximately twenty TMs, four TLs and four teams. (Fisher Dep., p. 56).	Disputed. Objection: misstates testimony. The Engine line was not "Fisher's group." Fisher worked on the Engine Line as a GL. (Fisher Dep., p. 56).
275. In late February or early March, 2007, Fisher moved to GL over the Final 2 Line on A Shift. (Fisher Dep., p. 55).	Undisputed.
276. When Fisher moved to the Final 2 Line on A Shift, his group had twenty to twenty-five TMs, four TLs, and four teams. (Fisher Dep., p. 58).	Disputed. Objection: misstates testimony. The Final 2 Line on A Shift was not Fisher's group. Fisher worked as a GL on the Final 2 Line on A Shift. (Fisher Dep., p. 58).
277. After approximately six months on that Line, Fisher moved to the Final 4 Line in Plant 2. (Fisher Dep., pp. 55-56).	Undisputed.
278. On the Final 4 Line, Fisher's group originally had thirty TMs but repair has been separated out of his group and now he has approximately twenty-two TMs and three TLs. (Fisher Dep., p. 59).	Disputed. Objection: misstates testimony. The Final 4 Line was not "Fisher's group." Fisher worked on the Final 4 Line as a GL. (Fisher Dep., p. 59).
279. As GL at MBUSI, Fisher earned at least \$455.00 per week in salary. (Fisher RFA #41). ⁸	Undisputed.
280. Fisher attended Group Leader Academy which involved leadership development and involved a couple of hours of classes a day for approximately a week. (Fisher Dep., p. 52).	Undisputed.
281. Fisher supervises the TLs and TMs in his group. (Fisher RFA #1).	Disputed. Fisher testifies that he cannot tell the TMs to comply, but can ask them to comply. Fisher states that he does not <i>enforce</i> rules. (Fisher Dep., pp. 103-04). Fisher testifies that he observes the TMs and if he observes them not following SMPs he either discusses it with the TM or escalates the issue to his AM, depending on what the issue is. (Fisher Dep., pp. 104-05).

⁸ Fisher Responses to Requests for Admission are attached as Ex. 178 to MBUSI's Evidentiary Submission (Volume 14).

	If Fisher is shortanded and has a manpower issue, he escalates that to his AM. (Fisher Dep., p. 107).
282. A Manager or AM is not always present in his group, and Fisher leads his group independently of his Manager or AM. (Fisher RFA #33).	Undisputed.
283. Fisher gives work directions and assignments to the members of his group. (Fisher RFA #2).	Undisputed.
284. Fisher directs his group in meeting the company's objectives for safety, product quality, accuracy, productivity, cost reduction, housekeeping, efficiency, training and team harmony. (Fisher RFA #5).	Undisputed.
285. Fisher leads his group in meeting company standards; he leads change in his group; and he uses leadership skills in his GL position. (Fisher RFA ##25, 26 & 28).	Undisputed.
286. Fisher shares his knowledge and experience with his group. (Fisher RFA #30).	Undisputed.
287. Fisher uses his best judgment in performing all of his GL job duties. (Fisher RFA #23).	Undisputed.
288. Fisher fulfills all of the roles and responsibilities of his GL position. (Fisher RFA #24).	Disputed. Fisher does not develop training plans. (Fisher Dep., p. 116). Fisher does not control staffing. (Fisher Dep., pp. 106-07).
289. Fisher agrees that the essential functions listed on the MBUSI group leader job description are the essential functions of the position except while he can coordinate proper manning levels within his group, he cannot get TMs from other groups on his own. (Fisher Dep., pp. 124-26; Fisher Dep. Ex. 4).	Undisputed.
290. Fisher is responsible for making sure everyone in his group is doing what they should to promote quality product. (Fisher Dep., p. 122).	Undisputed. Fisher testifies that safety and quality is every employees' responsibility. (Fisher Dep., pp. 122-23).
291. Fisher is responsible for making sure the TMs in his group are productive. (Fisher Dep., p. 123).	Undisputed.
292. Fisher is responsible for making sure that his group is not unnecessarily wasteful and that his TMs	Undisputed.

perform housekeeping and 5S duties in their areas. (Fisher Dep., p. 123).	
293. Fisher is responsible for making sure his TMs are working efficiently and that new TMs are being trained. (Fisher Dep., p. 123).	Undisputed.
294. Fisher is told that he is supposed to lead his group as GL and he tries to motivate people to do their job and get along. (Fisher Dep., p. 124).	Undisputed. Fisher testifies that it is not his responsibility to make sure people get along. (Fisher Dep., p. 124).
295. As GL, Fisher is evaluated based on leadership competencies. (Fisher Dep., p. 180).	Undisputed.
296. Fisher initiates, facilitates and monitors problem solving in his group. (Fisher RFA #12).	Undisputed.
297. Fisher ensures that production and quality goals are met in his group. (Fisher RFA ##13 & 22).	Disputed. Fisher testifies that he is not solely responsible for production and quality, but that every employee share responsibility in meeting these goals. (Fisher Dep., p. 122).
298. Fisher initiates continuous improvement activities in his group and leads the implementation of initiatives in his group. (Fisher RFA #16).	Undisputed.
299. As GL, Fisher communicates to the TMs direction regarding work rules, standards of conduct, and direction from Mangers, AMs and Vice Presidents. (Fisher Dep., p. 152).	Undisputed. All information that Fisher provides to TMs comes directly from either his AM or Manager. (Fisher Dep., p. 152).
300. As GL, Fisher is supposed to follow up and analyze the results regarding his communication of such direction. (Fisher Dep., p. 152).	Undisputed.
301. Fisher has been told that his responsibility as GL is to observe his TLs' and TMs' performance to ensure they are complying with their responsibilities. (Fisher Dep., p. 120).	Undisputed.
302. Fisher's job is to observe his TMs and correct them if they are not following the SMPs. (Fisher Dep., pp. 104-05).	Disputed. Objection: misstates testimony. Fisher testifies that he observes the TMs and if he observes them not following SMPs he either discusses it with the TM or escalates the issue to his AM, depending on what the issue is. (Fisher Dep., pp. 104-05).
303. As GL, Fisher watches and observes the performance of his TMs to determine if they are	Undisputed.

following the SMPs and JESs and following MBUSI's standards of conduct, and providing sufficient attention to their jobs. (Fisher Dep., pp. 101-02).	
304. If a TM is not doing so, Fisher will talk to them and tell them to comply. (Fisher Dep., p. 102).	Disputed. Objection: misstates testimony. Fisher testifies that he cannot tell the TMs to comply, but can ask them to comply. Fisher states that he does not <i>enforce</i> rules. (Fisher Dep., pp. 103-04).
305. Fisher gives his TMs feedback regarding their performance. (Fisher Dep., pp. 114-15).	Undisputed.
306. Fisher coaches his TMs regarding their performance. (Fisher Dep., p. 115).	Undisputed.
307. Fisher evaluates the performance of TMs and TLs in his group. (Fisher RFA #6).	
308. Fisher completes a performance evaluation each year for each TM and TL in his group. (Fisher Dep., p. 127).	Undisputed.
309. Fisher evaluates his TMs and TLs as satisfactory or not satisfactory. (Fisher Dep., p. 127).	Undisputed.
310. If Fisher gives a TM or TL a not satisfactory rating in any area of the evaluation other than attendance, the TM or TL is not eligible for promotion. (Jones Decl. ¶ 33).	Disputed. Fisher's testimony is that since becoming GL, there has only been one opening for a TL position and it was filled from outside of the group. So no TM or TL from the groups he has worked on has ever been promoted. Fisher does not know if his opinions regarding a TM's or TL's readiness for promotion are taken into consideration, because there have been no promotions. (Fisher Dep., pp. 130-31).
311. Based on his observations, Fisher states whether a TM or TL is ready for promotion and Fisher's recommendation is given consideration and normally is followed in determining if the TM or TL will be promoted. (Fisher Dep., pp. 127-28, Fisher RFA #7; Jones Decl. ¶¶ 31-32).	Disputed. Objection: misstates testimony. Fisher's testimony is that since becoming GL, there has only been one opening for a TL position and it was filled from outside of the group. So no TM or TL from the groups he has worked on has ever been promoted. Fisher does not know if his opinions regarding a TM's or TL's readiness for promotion are taken into consideration, because there have been no promotions. (Fisher Dep., pp. 130-31).

312. Fisher does not know of any TMs or TLs who have been promoted who are not appraised as ready for promotion. (Fisher Dep., p. 133).	Disputed. Objection: misstates testimony. Fisher's testimony is that since becoming GL, there has only been one opening for a TL position and it was filled from outside of the group. So no TM or TL from the groups he has worked on has ever been promoted. Fisher does not know if his opinions regarding a TM's or TL's readiness for promotion are taken into consideration, because there have been no promotions. (Fisher Dep., pp. 130-31).
313. Fisher ensures that company policies and work rules are enforced in his group. (Fisher RFA #14).	Undisputed.
314. Fisher counsels TMs on performance, quality of work and conduct. (Fisher RFA #9).	Undisputed.
315. Fisher has the authority to initiate a CPR on a TM when he deems necessary. (Fisher RFA #10).	Disputed. Fisher receives direction from his AM as to whether or not he should issue a CPR. (Fisher Dep., p. 110).
316. When a TM missed a process, Fisher made the decision to write it up as TM feedback rather than escalate it as a CPR. (Fisher Dep., p. 135).	Undisputed.
317. When a TM incorrectly installed roof labels, Fisher restricted the TM from that station until he could be retrained. (Fisher Dep., p. 74).	Undisputed.
318. Fisher initiates CPRs when appropriate under MBUSI's policies and rules. (Fisher Dep., p. 111).	Disputed. Objection: misstates testimony. Fisher initiates a CPR at the direction of his AM. He testifies that his AM will tell him whether or not he should issue a CPR. (Fisher Dep., pp. 110-11).
319. Fisher handles TM issues and conflicts in his group and decides when to involve higher management or Team Relations in an employee issue or conflict. (Fisher RFA #18).	Undisputed.
320. Fisher manages attendance in his group and ensures that his group is properly staffed. (Fisher RFA #3).	Disputed. Fisher only tracks and documents attendance. (Fisher Dep., pp. 78, 107).
321. Fisher manages vacation scheduling, timekeeping and attendance tracking for the members of his group. (Fisher RFA #4).	Disputed. Fisher only tracks and documents these items. (Fisher Dep., pp. 78, 107).

322. As GL, Fisher keeps track of TMs' attendance. (Fisher Dep., pp. 78, 107).	Undisputed.
323. Fisher is responsible for moving TMs from station to station within his group. (Fisher Dep., p. 107).	Undisputed. If Fisher is short-handed and has a manpower issue, he escalates that to his AM. (Fisher Dep., p. 107).
324. Fisher will coordinate with HR regarding leave and other HR issues involving his TMs. (Fisher Dep., pp. 155-56).	Undisputed.
325. Fisher keeps an attendance calendar on each TM and uses the attendance guidelines to determine whether an absence would constitute an occurrence under the Attendance Policy. (Fisher Dep., pp. 78-79).	Undisputed.
326. If a TM violates the Attendance Policy, Fisher initiates a CPR, fills in the information on the CPR form and submits it to HR. (Fisher Dep., pp. 79-80).	Undisputed.
327. As GL, Fisher approves requests for vacations from his TMs. (Fisher Dep., p. 79).	Undisputed.
328. If a TM requests emergency vacation that is outside the standard, Fisher escalates it to his AM. (Fisher Dep., p. 81).	Undisputed.
329. When a TM leaves during the day, Fisher will adjust his manpower within his group to cover all of the stations. (Fisher Dep., p. 84).	Undisputed.
330. Fisher shows and supports top performance in his group. (Fisher RFA #29).	Objections: Vague, Ambiguous, Unintelligible.
331. Fisher directs training and retraining in skills for TMs in his group, and he does so if he deems appropriate. (Fisher RFA #19).	Dispute. Fisher does not direct training. Training is directed by training plans, which Fisher does not develop. (Fisher Dep., p. 110).
332. Fisher communicates cascade training down to the TMs. (Fisher Dep., pp. 115-16).	Undisputed.
333. Fisher makes sure that the four step training plan is followed. (Fisher Dep., pp. 116-17).	Disputed. Objection: misstates testimony. Fisher states that he observes to see if the four step training plan is being followed. (Fisher Dep., pp. 116-17).
334. Fisher updates the Circle of Skills every quarter. (Fisher Dep., p. 112).	Undisputed.
335. Fisher attempts to get the TMs in his group trained to Level 3. (Fisher Dep., p. 113).	Undisputed.

336. Fisher tries to have enough TMs at Level 4s in his group so they can train new TMs who come into his group. (Fisher Dep., p. 113).	Undisputed.
337. Fisher ensures that his group is working safely and he monitors the environment for safety hazards. (Fisher RFA #17).	Disputed. Fisher testifies that every MBUSI employee is responsible for safety. (Fisher Dep., p. 122).
338. Fisher is responsible for making sure his TMs comply with safety guidelines. (Fisher Dep., p. 122).	Disputed. Objection: misstates testimony. Fisher testifies that every MBUSI employee is responsible for safety. (Fisher Dep., p. 122).
339. As GL, in the event of severe weather, Fisher's group has an assigned shelter and he has to take a head count to make sure all of his TMs are there. (Fisher Dep., p. 55).	Undisputed.
340. A 5 Why form is a form they use to try to identify the root cause of a problem or issue. (Fisher Dep., p. 139).	Undisputed.
341. If there is a safety issue or injury, the GL will draft the form along with Safety. (Fisher Dep., pp. 139-40).	Undisputed.
342. The purpose of the form is to identify the cause and a countermeasure so it does not happen again. (Fisher Dep., p. 140).	Undisputed.
343. After Fisher drafts the form, he submits it to his AM for approval and once the countermeasure has been approved, he feeds back that information to his TMs to ensure they comply with it. (Fisher Dep., pp. 140-41).	Undisputed.
344. As GL, Fisher will observe whether his TMs are complying with the countermeasure. (Fisher Dep., p. 144).	Undisputed.
345. When Fisher gets to work, he checks his email, prints out his turnover log, prints out the daily safety hot sheet to see if any safety issues are listed on it, checks his area to make sure it is ready for start up and that they have no parts issues. (Fisher Dep., p. 70).	Undisputed.
346. Fisher also updates the SQDCM Board every day before the shift begins. (Fisher Dep., pp. 70-71).	Undisputed.
347. As a GL, Fisher attends a pre-shift meeting at which the AMs attend as well as the rest of the GLs on the Final Side. (Fisher Dep., p. 63).	Undisputed.
348. At that meeting, they discuss the issues their	Undisputed.

shift had and any issues they know of that may be coming up. (Fisher Dep., p. 64).	
349. The GLs provide input regarding any issues that occurred the previous day or shift and any issues they expected. (Fisher Dep., p. 64).	Undisputed.
350. Fisher has a start up meeting with his group at the beginning of the shift at which he discusses any safety, quality and deliverance issues and SQDCM issues. (Fisher Dep., p. 65).	Undisputed. This meeting typically lasts about three minutes. (Fisher Dep., p. 65).
351. As GL, Fisher regularly checks the Production Board during the day and checks 5 S to make sure his TMs are cleaning up their area. (Fisher Dep., pp. 74-75).	Undisputed. This is one of the “check items” that GLs are instructed to perform. Some “check items” are hourly and some are to be checked per rotation. (Fisher Dep., pp. 74-75).
352. As GL, Fisher walks up and down the Line and observes his TMs performing their job and whether they are following the SMPs. (Fisher Dep., p. 84).	Undisputed.
353. As GL, Fisher will talk with the TM to get him to comply with the procedures and if necessary, he escalates. (Fisher Dep., pp. 85-87).	Undisputed.
354. As GL, Fisher is responsible for making sure his group performs the work like it is supposed to do. (Fisher Dep., p. 87).	Undisputed.
355. If his group does not perform their work correctly, Fisher is held accountable. (Fisher Dep., p. 87).	Undisputed.
356. Fisher spends time keeping the Line moving which involves checking up on different parts of the Line and if there is a delay, he determines why there is a delay, addresses the delay as necessary and if he needs to escalate or get support he does. (Fisher Dep., pp. 166-67).	Undisputed.
357. Fisher also walks the Line and checks the quality of the vehicles, including the paperwork to see if there are any open issues. (Fisher Dep., pp. 91-92).	Undisputed.
358. Fisher will review the paperwork before the vehicle gets to the end of the Line to determine if there are any issues with the vehicle that need to be addressed. (Fisher Dep., p. 92).	Undisputed.
359. Fisher checks the paperwork on just about every vehicle to make sure there is no quality defects that are unrepaired. (Fisher Dep., p. 159).	Undisputed.

360. If there are unrepaired defects, Fisher determines if he needs to call any other TMs or TLs from other Lines to come and repair the vehicle before it is sent off as a bad vehicle. (Fisher Dep., pp. 92-93).	Undisputed. Fisher also testifies that if he is able, he will make the repair. (Fisher Dep., p. 92)
361. Fisher has a TM who performs this job so there is no need for Fisher to do it unless the TM gets behind and Fisher will help him out. (Fisher Dep., pp. 93-94).	Undisputed.
362. Some days the TM will never get behind and some days he may stay behind. (Fisher Dep., p. 94).	Undisputed.
363. When Fisher is spending time checking vehicles, he is still observing and seeing that his TMs are following the SMPs. (Fisher Dep., pp. 161-62).	Disputed. Objection: misstates testimony. Fisher states that sometimes he is two football fields away and obviously cannot observe his TMs from that distance. (Fisher Dep., pp. 161-62).
364. There may be two repairs a day that Fisher will perform that are listed on the paperwork. (Fisher Dep., p. 95).	Disputed. Objection: misstates testimony. There are approximately two repairs per day that Fisher makes because someone from another department cannot get over in time to make the repair. Fisher testifies that he makes four or five repairs per day. (Fisher Dep., p. 95).
365. Fisher will normally spend maybe five minutes making these repairs. (Fisher Dep., p. 97).	Undisputed. Fisher only has about five minutes to make the repair before the car leaves the line. (Fisher Dep., p. 97).
366. Even if Fisher is doing a repair, he is still responsible for the output of his TMs in his group. (Fisher Dep., p. 97).	Undisputed.
367. Fisher also will work on a vehicle four or five times a day either out of necessity or just to help out. (Fisher Dep., pp. 89, 158-59).	Undisputed.
368. When Fisher does so, it takes him only about ten to fifteen minutes. (Fisher Dep., p. 90).	Undisputed.
369. As GL, Fisher occasionally will attend a post-shift meeting with other GLs and AMs to discuss issues they may have had during the shift. (Fisher Dep., p. 68).	Undisputed.
370. As GL, on the Final 4 Line, Fisher had to run a couple of reports after the end of the shift that he did not have to do on the other Lines. (Fisher Dep., p.	Undisputed.

77).	
371. The only reason Fisher believes he does not manage is because he follows the policies and guidelines and does not create them himself. (Fisher Dep., p. 103).	<p>Disputed.</p> <p>Fisher also states that he lacks the control to decide how many TMs and TLs the line needs. (Fisher Dep., pp. 106-07).</p> <p>Fisher also states that he lacks the authority to move TMs or TLs from other groups and must escalate manpower issues to his AM. (Fisher Dep., pp. 107-08).</p> <p>Fisher does not develop or implement an annual plan. (Fisher Dep., p. 108).</p> <p>Fisher states that he cannot enforce policies and must escalate insubordinate employees to his AM. (Fisher Dep., pp. 108-09).</p> <p>Fisher must obtain permission from his AM before initiating or issuing a CPR. (Fisher Dep., pp. 110-11).</p> <p>Fisher does not develop training plans. (Fisher Dep., p. 111).</p>
E. FLOYD FRANKLIN	
372. Floyd Franklin ("Franklin") <u>admitted in Response to a Request for Admission that he was properly classified under the FLSA as an exempt employee.</u> (Franklin RFA #43). ⁹	Undisputed.
373. Franklin began employment at MBUSI in 1996 as a TM in the Assembly Shop on the Engine Line. (Franklin Dep., p. 22). ¹⁰	Undisputed.
374. Within three months, Franklin was promoted to TL on the Engine Line and received a raise. (Franklin Dep., pp. 23, 31-32).	Undisputed.
375. In 2000, Franklin was promoted to GL over the Chassis Line and he again received a raise.	Undisputed.

⁹ Franklin Responses to Requests for Admission are attached as Ex. 179 to MBUSI's Evidentiary Submission (Volume 14).

¹⁰ The Deposition of Floyd Franklin and exhibits to the deposition are attached as Ex. 180 to MBUSI's Evidentiary Submission (Volume 14).

(Franklin Dep., pp. 37-38, 48-49).	
376. Franklin had four TLs in his group as well as TMs on the Chassis Line. (Franklin Dep., p. 49).	Disputed. Objection: misstates testimony. Franklin did not “have” four TLs in his group. There were four TLs working on the Chassis Line. (Franklin Dep., p. 49).
377. Franklin attended Group Leader Academy in which he was taught skills he needed to be a GL. (Franklin Dep., pp. 102-03).	Undisputed.
378. Franklin then moved from Chassis Line GL to GL over the End of Final Line. (Franklin Dep., p. 49).	Undisputed.
379. Franklin went through the Group Leader Self Sufficiency training which involved a more indepth look at the GL's role as far as using other departments such as EBS and Engineering to help find solutions to problems. (Franklin Dep., pp. 68-69).	Undisputed.
380. The Group Leader Self Sufficiency training lasted six weeks. (Franklin Dep., p. 69).	Undisputed.
381. Franklin then was a GL in the Self Sufficiency Program and he filled in for various other GLs that were going into training for six weeks at a time. (Franklin Dep., pp. 50, 68).	Undisputed.
382. Franklin then moved to Plant 2 for the Pilot Team and was Manpower Coordinator for bringing all of the TMs into Plant 2. (Franklin Dep., p. 51).	Undisputed.
383. After Plant 2 opened, Franklin was GL on the Final 4 Line. (Franklin Dep., p. 52).	Undisputed.
384. After about a year on the Final 4 Line, Franklin moved to GL over the Door Line. (Franklin Dep., pp. 52-53).	Undisputed.
385. On the Door Line, Franklin had six TLs and at least thirty TMs. (Franklin Dep., p. 53).	Disputed. Objection: misstates testimony. Franklin did not “have” six TLs and at least thirty TMs. There were six TLs and at least thirty TMs working on the Door Line. (Franklin Dep., p. 53).
386. After about a year on the Door Line, Franklin moved to Final 3 Line where he is currently employed. (Franklin Dep., p. 53).	Undisputed.
387. On the Final 3 Line, Franklin has approximately thirty TMs and five TLs. (Franklin Dep., p. 55).	Disputed.

388. As a GL at MBUSI, Franklin earns at least \$455.00 per week in salary. (Franklin RFA #41).	Disputed.
389. Franklin supervises the TLs and TMs in his group. (Franklin RFA #1).	Disputed. Franklin does not manage manpower. (Franklin Dep., p. 150-51). Franklin does not have the authority to enforce company work rules. (Franklin Dep., p. 151).
390. Franklin gives work directions and assignments to the members of his group. (Franklin RFA #2).	Undisputed.
391. Franklin directs his group in meeting the company's objectives for safety, product quality, accuracy, productivity, cost reduction, housekeeping, efficiency, training and team harmony. (Franklin RFA #5).	Disputed. Franklin does not have the authority to enforce company work rules. (Franklin Dep., p. 151).
392. Franklin leads his group in meeting company standards; he leads change in his group upon approval at the AM level; and he uses leadership skills in his GL position. (Franklin RFA ##25, 26 & 28).	Disputed. Franklin does not have the authority to enforce company work rules. (Franklin Dep., p. 151).
393. Franklin shares his knowledge and experience with his group. (Franklin RFA #30).	Undisputed.
394. Franklin initiates, facilitates and monitors problem solving in his group. (Franklin RFA #12).	Undisputed.
395. Franklin ensures that production and quality goals are met in his group. (Franklin RFA ##13 & 22).	Disputed. Franklin does not ensure production goals are met. He tries to keep the line moving, but there are unforeseen circumstances that could arise and prevent them from meeting their production goals. (Franklin Dep., p. 64).
396. Franklin initiates continuous improvement activities in his group. (Franklin RFA #16).	Undisputed.
397. Franklin shows and supports top performance in his group. (Franklin RFA #29).	Objections: Vague, Ambiguous, Unintelligible.
398. Franklin uses his best judgment in performing all of his GL job duties. (Franklin RFA #23).	Undisputed.
399. Franklin fulfills all of the roles and responsibilities of his GL position. (Franklin RFA #24).	Disputed. Franklin does not manage manpower. (Franklin Dep., p. 150-51). As a GL, Franklin has never developed an

	annual plan. (Franklin Dep., p. 151). Franklin does not have the authority to enforce company work rules. (Franklin Dep., p. 151).
400. When Franklin arrives for his shift, he checks his email, updates the SQDCM Board, checks all of his sheets off the computer, checks his voice mail call-ins to see if any TMs will be out, and updates his Attendance Board. (Franklin Dep., pp. 77-78).	Undisputed.
401. At six, Franklin attends a start up meeting for GLs and AMs. (Franklin Dep., p. 82).	Undisputed.
402. Franklin then has a 6:15 start up meeting with his group that lasts about five minutes. (Franklin Dep., p. 91).	Undisputed.
403. During this meeting, Franklin covers the SQDCM topics. (Franklin Dep., p. 93).	Undisputed.
404. At the start of production, Franklin walks his Line. (Franklin Dep., pp. 147-48; Franklin Dep. Ex. 2).	Undisputed.
405. GLs attend lunch box meetings with HR once a month to discuss policy issues and changes. (Franklin Dep., p. 93).	Undisputed.
406. As GL on the Final 3 Line, Franklin's job is to keep the Line moving and keep good vehicles coming off the Line. (Franklin Dep., p. 64).	Undisputed.
407. Franklin agrees that he works hard to lead his group to achieve the Line goals. (Franklin Dep., p. 108).	Undisputed.
408. As GL, Franklin has good documentation skills and tracks defects, issues leaving the Line, scrap, DMT parts, and he tracks these items so he can give feedback to the appropriate group. (Franklin Dep., p. 118).	Undisputed.
409. Franklin believes the most important quality as a GL is to get the team's morale up and being able to keep them motivated without pushing them. (Franklin Dep., p. 119).	Undisputed.
410. Franklin believes he is a motivating force for his group. (Franklin Dep., p. 119).	Disputed. Objection: misstates testimony. Franklin testifies that he "hopes" he is a motivating force for the group, not that he believes he is. (Franklin Dep., p. 119).
411. A GL is constantly interacting with other people. (Franklin Dep., p. 120).	Undisputed.

412. In order to ensure the quality of the vehicle coming off his Line, Franklin checks vehicles and will make the decision to make a repair and feed back any defect to try to close the quality loop. (Franklin Dep., pp. 70-71).	Disputed. Objection: misstates testimony. Franklin does not testify that he makes a decision of whether or not to make the repair. Franklin states that they make the repair, if it is possible. (Franklin Dep., pp. 70-71).
413. If a TM improperly performs a process, Franklin will feed it back to the TM. (Franklin Dep., pp. 73-74).	Undisputed.
414. If defects come off his Line, Franklin's responsibility is to take that information back to his TMs and feed them that information as soon as possible so they can keep other similar defects from coming out of the group. (Franklin Dep., pp. 64-65).	Undisputed.
415. When Franklin checks quality on the vehicles, he positions himself where he can look at the vehicle and see all of the components that were put on and check for any visual defects, as well as fit and finish. (Franklin Dep., pp. 142-43).	Undisputed.
416. If Franklin finds a defect, he repairs it, walks it back and feeds it back to the TM. (Franklin Dep., p. 143).	Undisputed.
417. As GL, Franklin will fill out a 5 Why sheet which is a systematic way to try to find the root cause of a defect and a countermeasure. (Franklin Dep., pp. 152-53).	Undisputed. GLs, Engineering and Maintenance all fill our 5 Why sheets. (Franklin Dep., p. 153).
418. Franklin follows up on any countermeasures to make sure they are being performed. (Franklin Dep., pp. 156-57).	Undisputed.
419. Franklin evaluates the performance of TMs and TLs in his group. (Franklin RFA #6).	Undisputed.
420. Franklin fills out performance evaluations for the TMs in his group on a yearly basis. (Franklin Dep., p. 129).	Undisputed.
421. Franklin fills out these evaluations based on his observations of his TMs performing their job. (Franklin Dep., pp. 129-30).	Undisputed.
422. Franklin provides his opinion as to whether or not TMs and TLs in his group are ready for promotion and Franklin's opinion is given consideration and normally is followed in determining if the TM or TL will be promoted. (Franklin RFA #7; Jones Decl. ¶¶ 31-32).	Undisputed. Franklin does provide his opinion, but does not know how much weight his opinion holds when HR and the AM are making promotion decisions. (Franklin Dep., pp. 132-33).
423. On the evaluation, Franklin will note whether	Undisputed.

the TM needs development or is ready for the next level. (Franklin Dep., p. 133).	Franklin does provide his opinion, but does not know how much weight his opinion holds when HR and the AM are making promotion decisions. (Franklin Dep., pp. 132-33).
424. If Franklin gives a TM or TL a not satisfactory rating in any area of the evaluation other than attendance, the TM or TL is not eligible for promotion. (Jones Decl. ¶ 33).	Undisputed. Franklin does provide his opinion, but does not know how much weight his opinion holds when HR and the AM are making promotion decisions. (Franklin Dep., pp. 132-33).
425. Franklin will review the evaluation with the TM. (Franklin Dep., p. 130).	Undisputed.
426. Franklin directs training and retraining in skills for TMs in his group, and he does so if he deems appropriate. (Franklin RFA #19).	Undisputed.
427. As GL, Franklin signs off on SMPs as they all have to make sure that they agree that the standard method and procedure is good for the process. (Franklin Dep., p. 88).	Undisputed. The SMPs have a signature block for the TL, GL, AM and Engineer. (Franklin Dep., p. 88).
428. Franklin manages vacation scheduling, timekeeping and attendance tracking for the members of his group. (Franklin RFA #4).	Disputed.
429. Franklin ensures that his group is working safely and he monitors the environment for safety hazards. (Franklin RFA #17).	Undisputed.
430. Part of the GL's duties is to fill out safety cards on a daily basis to identify any safety concerns. (Franklin Dep., p. 123).	Undisputed.
431. If a TM is not wearing appropriate PPE, Franklin will get it for them and give it to them. (Franklin Dep., pp. 74-75).	Undisputed.
432. Franklin ensures that company policies and work rules are enforced in his group. (Franklin RFA #14).	Disputed. Franklin does not have the authority to enforce company work rules. (Franklin Dep., p. 151).
433. Franklin handles TM issues and conflicts in his group and decides when to involve higher management or Team Relations in an employee issue or conflict. (Franklin RFA #18).	Disputed. Franklin testifies that anything that is not related to a process or something on the floor gets escalated to HR. (Franklin Dep., p. 141).
434. Franklin counsels TMs on performance, quality of work and conduct. (Franklin RFA #9).	Undisputed.
435. Franklin has the authority to initiate a CPR on a	Disputed.

TM when he deems necessary. (Franklin RFA #10).	CPRs must be approved by HR prior to being issued. (Franklin Dep., p. 140).
436. As GL, Franklin has filled out CPRs and sent them to HR for approval. (Franklin Dep., p. 140).	Undisputed.
437. Franklin will then discuss the CPR with the TM or TL with HR present. (Franklin Dep., p. 141).	Undisputed.
1. F. DEREK HENDLEY	
438. Derek Hendley ("Hendley") was originally employed as a TM in the Body Shop. (Hendley Dep., pp. 20-21). ¹¹	Undisputed.
439. Subsequently, Hendley was promoted to TL in the Body Shop and he received a five percent pay raise. (Hendley Dep., pp. 25-27).	Undisputed.
440. Hendley became a GL for the Body Pilot Team on October 27, 2003. (Hendley Dep., pp. 43-45; Hendley Dep. Exs. 1, 2).	Undisputed.
441. In 2005, Hendley became GL for the Z-1 Group on the R Class side of the Body Shop. (Hendley Dep., pp. 53-54).	Undisputed.
442. As GL over the Z-1 Group, Hendley had three teams and fifteen to eighteen TMs in his group. (Hendley Dep., pp. 56-57).	Disputed. Objection: misstates testimony. Hendley did not "have" three teams and fifteen to eighteen TMs. There were three teams and fifteen to eighteen TMs in the Z-1 Group. (Hendley Dep., pp. 56-57).
443. After about two to two and a half years, Hendley became GL for the Z-2 Group on the M Class side of the Body Shop. (Hendley Dep., p. 54).	Undisputed.
444. The Z-2 area covers about a third of the Body Shop for the M Class side. (Hendley Dep., p. 59).	Undisputed.
445. When Hendley was GL over the Z-2 Group on the M Class side of the Body Shop, he had three teams, fifteen to twenty TMs and three TLs. (Hendley Dep., pp. 58-59).	Disputed. Objection: misstates testimony. Hendley did not "have" three team with fifteen to twenty TMs and three TLs. There were three teams with fifteen to twenty TMs and three TLs in the Z-2 Group on the M Class side of the Body Shop. (Hendley Dep., pp. 58-59).
446. In April, 2009, Hendley moved to GL for the Z-3.2 Group on the M Class side of the Body Shop.	Undisputed.

¹¹ The Deposition of Derek Hendley and exhibits to the deposition are attached as Ex. 181 to MBUSI's Evidentiary Submission (Volume 14).

(Hendley Dep., pp. 54-55).	
447. The Z-3.2 area on the M Class side of the Body Shop is one straight line, around two hundred feet long, and consists of twelve stations. (Hendley Dep., p. 60).	Undisputed.
448. As GL on the Z-3.2 Group, Hendley has eighteen to twenty TMs and four TLs. (Hendley Dep., p. 61).	Disputed. Objection: misstates testimony. Hendley does not “have” eighteen to twenty TMs and four TLs. There are eighteen to twenty TMs and four TLs on the Z-3.2 Group. (Hendley Dep., p. 61).
449. After being promoted to GL, Hendley attended Group Leader Academy for approximately one week during which he was trained on the time keeping system, how to do evaluations, and leadership training. (Hendley Dep., pp. 47-48).	Undisputed.
450. As a GL at MBUSI, Hendley earns at least \$455.00 per week in salary. (Hendley RFA #41). ¹²	Undisputed.
451. Hendley supervises the TLs and TMs in his group and he is effectively the supervisor of the group of which he is the GL. (Hendley Dep., p. 92; Hendley RFA #1).	Disputed. Objection: misstates testimony. Hendley testifies that MBUSI regularly tells him this, but not that he actually is the supervisor of the group of which he is the GL. (Hendley Dep., p. 92).
452. MBUSI regularly tells Hendley he is supposed to manage his group. (Hendley Dep., pp. 91-92).	Undisputed.
453. A Manager or AM is not always present in Hendley's group, and he leads his group independently of his Manager or AM. (Hendley RFA #33).	Undisputed.
454. As GL, Hendley is evaluated on leadership competency. (Hendley Dep., p. 128).	Undisputed.
455. Hendley agrees that the roles and responsibilities of the GL position are what MBUSI wants the GLs to do. (Hendley Dep., pp. 124-25; Hendley Dep. Ex. 13).	Undisputed.
456. As GL, Hendley attempts to perform those roles and responsibilities. (Hendley Dep., p. 125).	Undisputed.
457. Hendley gives work directions and assignments to the members of his group. (Hendley RFA #2).	Undisputed.

¹² Hendley Responses to Requests for Admission are attached as Ex. 182 to MBUSI's Evidentiary Submission (Volume 14).

458. Hendley directs his group in meeting the company's objectives for safety, product quality, accuracy, productivity, cost reduction, housekeeping, efficiency, training and team harmony. (Hendley RFA #5).	Disputed. Hendley does not believe he is responsible for meeting the company's objectives and goals. Hendley states that management gives him direction as to how they plan to obtain goals, and Hendley follows direction. (Hendley Dep., p. 130).
459. Hendley leads his group in meeting company standards; he leads change in his group; and he uses leadership skills in his GL position. (Hendley RFA ##25, 26 & 28).	Disputed. Hendley does not lead his group in meeting company standards. He is given direction from management as to how the standards will be met, and Hendley follows direction. (Hendley Dep., p. 130).
460. Hendley agrees that he does a good job of challenging his group to perform at a high level. (Hendley Dep., pp. 128-29).	Undisputed.
461. Hendley shares his knowledge and experience with his group. (Hendley RFA #30).	Undisputed.
462. Hendley shows and supports top performance in his group. (Hendley RFA #29).	Objections: Vague, Ambiguous, Unintelligible.
463. As GL, Hendley tries to make sure his team has good morale. (Hendley Dep., pp. 135-36).	Undisputed. Hendley testifies that he is not "big on team harmony" and would not mediate a disagreement between two group members. (Hendley Dep., pp. 135-36).
464. As GL, Hendley had hourly goals to achieve on production and he tries to meet those goals. (Hendley Dep., p. 132).	Disputed. Objection: misstates testimony. Hendley states that the group as a whole as hourly goals and that they all try to meet these goals. (Hendley Dep., p. 132).
465. As GL, Hendley tries to minimize costs. (Hendley Dep., p. 133).	Undisputed.
466. Hendley initiates, facilitates and monitors problem solving in his group. (Hendley RFA #12).	Disputed. Hendley testifies that he only gather general facts and then turns it over to Engineering to determine the root cause and countermeasures. (Hendley Dep., p. 139).
467. Hendley ensures that production and quality goals are met in his group. (Hendley RFA ##13 & 22).	Disputed. Hendley does not ensure that the company's

	objectives and goals are met. Hendley states that management gives him direction as to how they plan to obtain goals, and Hendley follows direction. (Hendley Dep., p. 130).
468. Hendley initiates continuous improvement activities in his group and leads the implementation of initiatives in his group. (Hendley RFA #16).	Undisputed.
469. Hendley uses his best judgment in performing all of his GL job duties. (Hendley RFA #23).	Undisputed.
470. Hendley fulfills all of the roles and responsibilities of his GL position. (Hendley RFA #24).	Hendley testifies that he tries to fulfill all of the roles and responsibilities of his GL position, but does not agree with some of the wording used by MBUSI in the roles and responsibilities. (Hendley Dep., p. 127).
471. Hendley's primary duty as GL is to make general observations throughout the day of his TMs, including their work habits and their quality, to help his TMs get where they need to be through verbal communication, to make sure his TMs are following the SMPs, and to make sure his TMs are following whatever standards are in place. (Hendley Dep., pp. 140-41).	Undisputed.
472. As GL, Hendley is held accountable for the quality that comes out of his group. (Hendley Dep., p. 131).	Undisputed.
473. As GL, Hendley observes his TMs to make sure they are running as an efficient team. (Hendley Dep., p. 133).	Undisputed.
474. Hendley is supposed to walk throughout his area and make sure the TMs in his group are doing what they are supposed to do throughout the day. (Hendley Dep., p. 92).	Undisputed.
475. As GL, Hendley walks the Line, checks the quality of the TMs who are building the vehicle and makes general observations of the TMs. (Hendley Dep., p. 79).	Undisputed.
476. As GL, if Hendley observes a TM violating MBUSI standards, he addresses it with the TM and counsels them to try to get them to improve their conduct. (Hendley Dep., p. 82).	Undisputed. Hendley clarifies that he will talk to the TM, but does not discipline them. (Hendley Dep., p. 82).
477. If Hendley observes a TM not following an SMP, he will address the issue with them. (Hendley Dep., pp. 87-88).	Undisputed.
478. During the course of the day, Hendley is	Undisputed.

normally called once to look at a vehicle on another Line because of a condition in which the vehicle left his Line. (Hendley Dep., p. 98).	
479. Hendley will feedback information from that condition to his TMs to make sure it does not happen again. (Hendley Dep., pp. 98-99).	Undisputed.
480. When a quality defect leaves his group, Hendley will draft a 5 Why report and frequently will consult Engineering on determining a good course of action to correct the problem. (Hendley Dep., p. 112).	Disputed. Objection: misstates testimony. Hendley testifies that he starts the 5 Why form, but only fills out certain sections. The other sections are completed by Engineering. (Hendley Dep., p. 112).
481. After the report is reviewed and approved by the AM, Hendley will instruct his TMs as to how to comply. (Hendley Dep., pp. 112-13).	Undisputed.
482. Hendley counsels TMs on performance, quality of work and conduct. (Hendley RFA #9).	Undisputed.
483. Hendley has the authority to initiate a CPR on a TM when he deems necessary. (Hendley RFA #10).	Disputed. HR must approve all CPRs prior to them being issued. (Hendley Dep., p. 85).
484. Hendley ensures that company policies and work rules are enforced in his group. (Hendley RFA #14).	Disputed. Hendley observes TMs and TLs to see if they are following company policies and work rules, but cannot enforce them. (Hendley Dep., pp. 88-89).
485. Hendley handles TM issues and conflicts in his group and decides when to involve higher management or Team Relations in an employee issue or conflict. (Hendley RFA #18).	Hendley testifies that he is not "big on team harmony" and would not mediate a disagreement between two group members. (Hendley Dep., pp. 135-36).
486. Hendley addresses standards of conduct violations in his group. (Hendley Dep., p. 86).	Undisputed.
487. If a TM continues to violate a standard of conduct after Hendley talks with the TM, he will initiate a CPR. (Hendley Dep., pp. 84-85).	Undisputed.
488. There have been instances where Hendley has initiated a CPR. (Hendley Dep., p. 88).	Undisputed.
489. For example, Hendley initiated a CPR for Denita Washington after he observed her multiple times using a cell phone on the Line. (Hendley Dep., pp. 89-91; Hendley Dep. Ex. 5).	Undisputed.
490. Hendley ensures that his group is working safely and he monitors the environment for safety hazards. (Hendley RFA #17).	Undisputed. With safety issues, usually AMs are made aware

	of the situation immediately. (Hendley Dep., pp. 83-84).
491. Part of Hendley's job as a GL is to make sure that his TMs are following the safety policies. (Hendley Dep., pp. 83-84).	Undisputed. With safety issues, usually AMs are made aware of the situation immediately. (Hendley Dep., pp. 83-84).
492. If there is an injury to a TM, Hendley will draft a 5 Why sheet and submit it to his AM for approval. (Hendley Dep., pp. 115-16).	Undisputed.
493. When Hendley has a TM with medical restrictions he finds an area in which the TM can work that is suitable for the TM within their restrictions. (Hendley Dep., pp. 106-07).	Undisputed.
494. As GL, in the event of severe weather, Hendley is responsible for making sure his TMs get to a shelter in a specific area. (Hendley Dep., pp. 51-52).	Undisputed.
495. Hendley directs training and retraining in skills for TMs in his group, and he does so if he deems appropriate. (Hendley RFA #19).	Hendley, as well as the AM, will assess a TM to make sure they are trained to Level 3. (Hendley Dep., pp. 108-09).
496. Hendley will assess a TM to make sure they are trained at a Level 3. (Hendley Dep., pp. 108-09).	Undisputed. Hendley, as well as the AM, will assess a TM to make sure they are trained to Level 3. (Hendley Dep., pp. 108-09).
497. Hendley will sign off on the level of training on the Circle of Skills. (Hendley Dep., p. 109).	Undisputed.
498. Hendley signs off on the Circle of Skills every quarter. (Hendley Dep., p. 110).	Undisputed.
499. Hendley does not let TMs work on a process by themselves for which they are not properly trained. (Hendley Dep., pp. 134-35).	Undisputed.
500. Hendley evaluates the performance of TMs and TLs in his group. (Hendley RFA #6).	Undisputed.
501. Hendley completes a performance evaluation on his TMs every year. (Hendley Dep., pp. 99-100).	Undisputed.
502. Hendley describes how the TM performs in comparison to the performance criteria. (Hendley Dep., p. 100).	Undisputed.
503. Hendley rates the TMs' performance as satisfactory or not satisfactory. (Hendley Dep., pp. 100-01).	Undisputed.
504. If Hendley gives a TM or TL a not satisfactory rating in any area of the evaluation other than	Disputed.

attendance, the TM or TL is not eligible for promotion. (Jones Decl. ¶ 33).	Hendley testifies that even if his opinion is the TM or TL needs improvement, the TM or TL could still be promoted. (Hendley Dep., pp. 101-02).
505. Hendley will include any steps that the TM can do to improve their skills in their position. (Hendley Dep., p. 101).	Undisputed.
506. Hendley provides his opinion as to whether TMs and TLs in his group are ready for promotion and his opinion is given consideration and normally is followed in determining if the TM or TL will be promoted. (Hendley Dep., pp. 101-102; Hendley RFA #7; Jones Decl. ¶¶ 31-32).	Disputed. Hendley testifies that even if his opinion is the TM or TL needs improvement, the TM or TL could still be promoted. (Hendley Dep., pp. 101-02).
507. Hendley has never had a TM or TL in his group who has been promoted without him assessing that they are ready for promotion. (Hendley Dep., p. 102).	Disputed. Objection: misstates testimony. Hendley is not aware of this happening, but does not say that it has never occurred. (Hendley Dep., p. 102).
508. Hendley manages attendance in his group and ensures that his group is properly staffed. (Hendley RFA #3).	Disputed. Hendley only tracks attendance. (Hendley Dep., pp. 104-05).
509. Hendley manages vacation scheduling, timekeeping and attendance tracking for the members of his group. (Hendley RFA #4).	Disputed. Hendley only tracks these items. (Hendley Dep., pp. 104-05).
510. Hendley is responsible for tracking attendance on his TMs, approves vacation based on policy, and tracks occurrences when TMs are in violation of the attendance policy. (Hendley Dep., pp. 105-06).	Undisputed.
511. When a TM reaches a level in which they are to receive a CPR for attendance occurrences, Hendley will initiate a CPR. (Hendley Dep., p. 106).	Disputed. Hendley testifies that even if his opinion is the TM or TL needs improvement, the TM or TL could still be promoted. (Hendley Dep., pp. 101-02).
512. Hendley can move TMs within his group. (Hendley Dep., p. 108).	Undisputed.
513. Before Hendley attends the pre-shift start up meeting, he reads the shift log, checks his phone for messages from TMs, reads other reports and updates the SQDCM Board with information that has been sent out such as safety and production numbers. (Hendley Dep., pp. 66-67).	Undisputed.

514. As GL on the Z-1 Group, Hendley would attend the pre-shift start up meeting which was conducted by an AM and the GLs would be present. (Hendley Dep., pp. 63-64).	Undisputed.
515. As GL on the Z-1 Group, Hendley would conduct a start up meeting at the beginning of his shift at which he would cover safety related items, quality feedback concerns and daily production information. (Hendley Dep., pp. 62-63).	Undisputed.
516. As GL, Hendley attends monthly lunch box meetings with HR and they discuss HR related policy issues. (Hendley Dep., pp. 71-72).	Undisputed.
517. As GL, Hendley sometimes attends a flip chart meeting and that meeting may include Maintenance, Engineers, VPs, Managers and AMs. (Hendley Dep., p. 65).	Undisputed.
518. Hendley is responsible as GL to try to limit his expenditures to meet budget. (Hendley Dep., p. 122).	Disputed. Objection: misstates testimony. Hendley testified that recently he has been asked by management to track expenditures, but he is not given a budget until half way through the month so he cannot limit expenditures without knowing what the budget is. Hendly also states that anyone who goes to the store has this same responsibility, including TLs. (Hendley Dep., p. 122).
519. As GL, Hendley normally stays twenty to twenty-five minutes after his shift ends during which time he completes his shift log, puts any information from his shift on the SQDCM Board and inputs his payroll and initiates evaluations if they are coming due. (Hendley Dep., p. 74).	Undisputed.
520. Hendley updates the SQDCM Board at the end of his shift. (Hendley Dep., pp. 95-96).	Undisputed.
521. Hendley includes safety, quality, delivery, costs and morale issues on his shift logs. (Hendley Dep., p. 78).	Undisputed.
522. As GL for the Z-2 and Z-3.2 Groups, Hendley would perform the same pre-shift activities, attend the same pre-shift start up meeting and conduct his start up meeting as he did when he was the Z-1 GL. (Hendley Dep., pp. 69-71).	Undisputed.
523. When Hendley was GL in Z-2 he might have to work on the Line at breaks and lunch, he never had	Disputed. Objection: misstates testimony.

to work on the Line when he was GL in Z-1, and since he has been GL in the Z-3.2 Line, he only has had to move vehicles two or three times at break over four or five months. (Hendley Dep., pp. 137-38).	Hendley testified that he used to work on the line daily, but since production has been reduced he has not been instructed to work the line for a long time. (Hendley Dep., pp. 137-38).
524. Hendley goes to the end of the Line every hour or two to conduct his quality checks on vehicles and he normally looks at seven or eight vehicles and a vehicle moves through that area in about eighty-seven seconds. (Hendley Dep., p. 96).	Undisputed. Hendley estimates that he spends approximately four hours each day at the end of the line checking quality. (Hendley Dep., p. 99).
525. Hendley also spends time at the end of the Line because it is the best place for him to observe and make sure everything is working correctly. (Hendley Dep., p. 97).	Undisputed. Hendley estimates that he spends approximately four hours each day at the end of the line checking quality. (Hendley Dep., p. 99).
526. The time that Hendley is at the end of the Line includes the time when he is just observing the general area to make sure things are functioning correctly. (Hendley Dep., p. 99).	Undisputed.
2. G. JAMES KARPINSKI	
527. James Karpinski ("Karpinski") began employment at MBUSI in 1997 as a TM in the Assembly Shop on the Final Line. (Karpinski Dep., pp. 12, 17). ¹³	Undisputed.
528. After about two years, in 1999, Karpinski was promoted to TL and received a 5% raise. (Karpinski Dep., p. 19).	Undisputed.
529. Karpinski was a TL for about a year and a half on the Assembly Final Line as well as the Chassis Line. (Karpinski Dep., p. 20).	Undisputed.
530. Karpinski then was promoted to GL on February 17, 2003 and received a raise. (Karpinski Dep., pp. 26-28; Karpinski Dep. Ex. 1).	Undisputed.
531. Before Karpinski was promoted to GL, he spent a week in pre group leader training. (Karpinski Dep., p. 28).	Undisputed.
532. As GL, Karpinski has been through the Group Leader Self Sufficiency Program which takes you to different areas of the Company where you get to know other people in different areas with whom you	Undisputed.

¹³ The Deposition of James Karpinski and exhibits to the deposition are attached as Ex. 183 to MBUSI's Evidentiary Submission (Volume 15).

may come in contact. (Karpinski Dep., p. 29).	
533. The Group Leader Self Sufficiency Program lasted four weeks. (Karpinski Dep., pp. 29-30).	Undisputed.
534. As GL, Karpinski has received training in civil treatment, leadership skills and communications. (Karpinski Dep., p. 32).	Undisputed.
535. As GL at MBUSI, Karpinski earns at least \$455.00 per week in salary. (Karpinski RFA #41). ¹⁴	Undisputed.
536. When Karpinski was promoted to GL, he was GL over the West Side of the Chassis Line. (Karpinski Dep., p. 33).	Undisputed.
537. Karpinski also has been GL for the 251 Pilot Team, Final 3 Line in the Assembly 2 Shop, Final 2 Line in the Assembly 2 Shop, WSA Group in the Assembly 2 Shop, and Engine and Chassis Line in the Assembly 2 Shop. (Karpinski Dep., pp. 33-34).	Undisputed.
538. As GL, Karpinski's groups normally had four to five teams, with each team having its own TL and each team having about six TMs. (Karpinski Dep., pp. 34-35).	Undisputed.
539. Karpinski supervises the TLs and TMs in his group. (Karpinski RFA #1).	Karpinski's primary duty as a group leader is to keep the production line moving. (Karpinski Dep., p. 37). 50 percent of Karpinski's day is spent making repairs and the other 50 percent he is walking the line, picking up parts and ordering parts. (Karpinski Dep., pp. 68-69)
540. Karpinski gives work directions and assignments to the members of his group. (Karpinski RFA #2).	Undisputed.
541. Karpinski directs his group in meeting the company's objectives for safety, product quality, accuracy, productivity, cost reduction, housekeeping, efficiency, training and team harmony. (Karpinski RFA #5).	Undisputed.
542. Karpinski leads his group in meeting company standards; he leads change in his group; and he uses leadership skills in his GL position. (Karpinski RFA ##25, 26 & 28).	Undisputed.

¹⁴ Karpinski Responses to Requests for Admission are attached as Ex. 184 to MBUSI's Evidentiary Submission (Volume 15).

543. Karpinski shares his knowledge and experience with his group. (Karpinski RFA #30).	Undisputed.
544. Karpinski's duties differed from those performed by the TMs in his group. (Karpinski RFA #34).	Undisputed.
545. Karpinski initiates, facilitates and monitors problem solving in his group. (Karpinski RFA #12).	Undisputed.
546. Karpinski ensures that production and quality goals are met in his group. (Karpinski RFA ##13 & 22).	Undisputed.
547. Karpinski initiates continuous improvement activities in his group and leads the implementation of initiatives in his group. (Karpinski RFA #16).	Karpinski can initiate change in the order of processes only if the GLs, PEs and SPs approve it. 103
548. Karpinski shows and supports top performance in his group. (Karpinski RFA #29).	Undisputed.
549. Karpinski uses his best judgment in performing all of his GL job duties. (Karpinski RFA #23).	Undisputed.
550. The Roles and Responsibilities Card contains an accurate description of the role of a GL. (Karpinski Dep., p. 78; Karpinski Dep. Ex. 2).	Undisputed.
551. Karpinski fulfills all of the roles and responsibilities of his GL position. (Karpinski RFA #24).	Undisputed.
552. When Karpinski first arrives at work, he checks his email, reads his turnover sheet, checks his call ins, and reviews any reports that he needs for the day. (Karpinski Dep., pp. 48-49, 51).	Undisputed.
553. Karpinski is responsible for updating the SQDCM Board. (Karpinski Dep., p. 53).	Undisputed.
554. At six, he has a GL meeting with the AM at which they discuss any pertinent information they need and any direction they need for the day's build and attendance issues. (Karpinski Dep., p. 50).	Undisputed.
555. Karpinski leads a 6:15 start up meeting with his group at which they cover SQDCM. (Karpinski Dep., pp. 52-53).	Undisputed.
556. Once the Line starts moving at 6:20, Karpinski reviews his turnover log and checks out any abnormalities that were left and then answers Line calls. (Karpinski Dep., p. 55).	Undisputed.
557. Karpinski's primary duty as a GL is to keep the Production Line moving. (Karpinski Dep., p. 37).	Undisputed.
558. Karpinski spends a hundred percent of his day walking his area. (Karpinski Dep., p. 60).	Undisputed.

559. When Karpinski is walking his area, he is checking for parts that are out, doing 5S, answering TMs' questions, making sure TMs are wearing the appropriate PPE, making sure that TMs are not in an awkward ergonomic situations, talking to his TMs, and making sure his TMs are focused on their job. (Karpinski Dep., pp. 60-61).	Undisputed.
560. Karpinski does not work a station on the Line. (Karpinski Dep., pp. 62-63).	Undisputed.
561. Karpinski estimates that he spends fifty percent of the shift making repairs as a result of answering Line calls. (Karpinski Dep., p. 63).	Undisputed.
562. Even when Karpinski is doing repairs, he still is available to do his other duties as a GL. (Karpinski Dep., p. 77).	Karpinski can leave to attend to another issue only if he is able to so. (Karpinski Dep., pp. 76-77).
563. As GL, Karpinski verifies that his TMs are following the SMPs. (Karpinski Dep., p. 65).	Undisputed.
564. One of Karpinski's duties as GL is to look for ways to improve the work environment for efficiency of the processes in his group. (Karpinski Dep., p. 104).	Undisputed.
565. Problem solving ability is an important skill to have as a GL. (Karpinski Dep., p. 105).	Undisputed.
566. Karpinski's TLs will submit to him a TL check sheet which contains information regarding a TM's performance on a daily basis. (Karpinski Dep., pp. 41-42).	Undisputed.
567. As GL, Karpinski will use problem solving sheets which help him to identify the root cause of a problem and develop a countermeasure. (Karpinski Dep., p. 43).	Undisputed.
568. Karpinski will follow up and make sure the countermeasure is understood and used by the TMs in his group. (Karpinski Dep., pp. 43-44).	Undisputed.
569. As GL, Karpinski prepares a daily turnover log. (Karpinski Dep., p. 47).	Undisputed.
570. At the end of the shift, Karpinski completes his turnover log and his report for wrong and missing. (Karpinski Dep., p. 70).	Undisputed.
571. Karpinski ensures that his group is working safely and he monitors the environment for safety hazards. (Karpinski RFA #17).	Karpinski monitors safety. GLs have the same responsibilities for safety as do the TMs. If they see a safety issue, they report it. (Karpinski Dep., pp. 69, 73).
572. If a TM is injured, Karpinski will report the	Undisputed.

injury to his AM and either he or the AM will walk the TM to Medical and then he will complete a problem solving sheet to figure out the root cause of the injury and implement any countermeasures. (Karpinski Dep., p. 74).	
573. As GL, Karpinski is required to check the Circle of Skills and make sure they are up to date. (Karpinski Dep., p. 114).	Undisputed.
574. As GL, Karpinski watches TMs perform a process and if they complete the process according to the SMP, he will move them to Level 3 and sign off on the Circle of Skills form. (Karpinski Dep., pp. 67-68).	Undisputed.
575. Karpinski directs training and retraining in skills for TMs in his group, and he does so if he deems appropriate. (Karpinski RFA #19).	As a GL, Karpinski does not do any training. TLs train the TMs. (Karpinski Dep., p. 67).
576. If a TM is underperforming, Karpinski can take them down to a Level 2 on the Circle of Skills. (Karpinski Dep., p. 114).	Undisputed.
577. As GL, Karpinski signs off on any revision or modification to a SMP. (Karpinski Dep., p. 66).	All of the GLs, SPEs and SBs must sign off on modifications to a JES. (Karpinski Dep., p. 66).
578. As GL, Karpinski must sign off on any changes or modifications to a JES. (Karpinski Dep., p. 67).	All of the GLs, SPEs and SBs must sign off on modifications to a JES. (Karpinski Dep., p. 67).
579. Karpinski completes an annual evaluation of TMs and TLs. (Karpinski Dep., p. 46).	Undisputed.
580. Karpinski evaluates the TM or TL based on the criteria on the evaluation form and based on his observations of the TM's or TL's day to day work habits. (Karpinski Dep., p. 46).	Undisputed.
581. Karpinski evaluates the performance of TMs and TLs in his group with the approval from his AM and HR. (Karpinski RFA #6).	Undisputed.
582. Karpinski provides his opinion as to whether or not TMs and TLs in his group are ready for promotion and Karpinski's opinion is given consideration and normally is followed in determining if the TM or TL will be promoted. (Karpinski RFA #7; Jones Decl. ¶¶ 31-32).	Undisputed.
583. Karpinski will evaluate a TM or TL as ready for the next level or needs development based on the criteria of the Roles and Responsibilities Card and his observations he has made throughout the year of that TM or TL. (Karpinski Dep., pp. 82-83).	Undisputed.
584. If Karpinski gives a TM or TL a not	Undisputed.

satisfactory rating in any area of the evaluation other than attendance, the TM or TL is not eligible for promotion. (Jones Decl. ¶ 33).	
585. Karpinski manages attendance in his group and ensures that his group is properly staffed with the assistance of his AM. (Karpinski RFA #3).	The TMs write down their hours and Karpinski enters those hours into PeopleSoft. (Karpinski Dep., p. 38).
586. Karpinski manages vacation scheduling, timekeeping and attendance tracking for the members of his group. (Karpinski RFA #4).	Undisputed.
587. As GL, Karpinski enters time and attendance, he calls in hourly numbers to his AM, and he may have to go to the Off Line area to answer any Quality issues. (Karpinski Dep., pp. 37-38).	Undisputed.
588. As GL, if a TM requests a vacation day, Karpinski checks the vacation board to let them know if they can have the day. (Karpinski Dep., p. 40).	Undisputed.
589. If a TM's request for vacation is when the team is in standard, Karpinski will approve the request. (Karpinski Dep., p. 40).	As a GL, if a TM wants a vacation day, Karpinski checks the vacation board to verify that nobody else is off that day. If so, the TM can have that day. (Karpinski Dep., p. 40).
590. With respect to short term disability requests, Karpinski reviews his attendance calendar to see if there are any abnormalities and if not, he will sign off on the STD request by the TM. (Karpinski Dep., p. 95).	Karpinski does not approve STD requests. He just verifies that the dates are available and returns the form to the medical office. (Karpinski Dep., p. 95).
591. Within his group, Karpinski can shift manpower throughout the day if needed. (Karpinski Dep., pp. 102-03).	If the AM and the other GL approve a switch requested by the TMs, the TMs can be moved. (Karpinski Dep. p. 102).
592. Karpinski ensures that company policies and work rules are enforced in his group. (Karpinski RFA #14).	Undisputed.
593. Karpinski handles TM issues and conflicts in his group and decides when to involve higher management or Team Relations in an employee issue or conflict. (Karpinski RFA #18).	Karpinski has never had a TM conduct issue. (Karpinski Dep., pp. 45-46).
594. Karpinski counsels TMs on performance, quality of work and conduct. (Karpinski RFA #9).	Undisputed.
595. One of Karpinski's responsibilities as a GL is to draft corrective performance reviews for TMs. (Karpinski Dep., p. 93).	The assistant manager deems when a corrective action is necessary. (Karpinski Dep., p. 44).
596. Karpinski will sit down with the TM and issue the corrective action along with HR. (Karpinski	The assistant manager deems when a corrective action is necessary. Karpinski was told to write

Dep., p. 93).	the corrective action, and then he drafted it. He sits down with the TM and HR to explain the form. (Karpinski Dep., p. 93).
597. Karpinski has the authority to initiate a CPR on a TM when he deems necessary. (Karpinski RFA #10).	The assistant manager deems when a corrective action is necessary. (Karpinski Dep., p. 44).
H. PENNY KESSLER	
598. Penny Kessler ("Kessler") <u>admitted in Response to a Request for Admission that she was properly classified under the FLSA as an exempt employee.</u> (Kessler RFA #43). ¹⁵	Undisputed.
599. Kessler began employment at MBUSI on February 5, 1996 as a Body Shop TM. (Kessler Dep., p. 20). ¹⁶	Undisputed.
600. After six or eight months as a TM, Kessler became a TL. (Kessler Dep., p. 20).	Undisputed.
601. Kessler was promoted to GL on June 6, 1997 and she made more money as a GL than as a TL. (Kessler Dep., pp. 24-25, 30).	Undisputed.
602. Kessler was GL in the Z-2 area in which she had three teams, three TLs and about twenty-five TMs. (Kessler Dep., pp. 50-51).	Undisputed.
603. Kessler was next GL for approximately two years for the 3.2 and Z-2 Lines. (Kessler Dep., pp. 41-43).	Undisputed.
604. Kessler had three teams, three TLs, and around twenty-five TMs in that group. (Kessler Dep., p. 42).	Undisputed.
605. Kessler was then GL for the 3.3 Line group which included Metal Finishing and Paint Shop Dent Doctors who are in Paint Shop 1 and Paint Shop 2. (Kessler Dep., pp. 31, 37).	Undisputed.
606. Kessler's group consisted of three TLs and sixteen TMs, including four TMs with a TL in Paint 1, four TMs with a TL in Paint 2, and eight TMs including a TL in Metal Finishing. (Kessler Dep., pp. 37-38). Undisputed.	Undisputed.
607. Kessler attended Group Leader Academy	Undisputed.

¹⁵ Kessler Responses to Requests for Admission are attached as Ex. 185 to MBUSI's Evidentiary Submission (Volume 15).

¹⁶ The Deposition of Penny Kessler and exhibits to the deposition are attached as Ex. 186 to MBUSI's Evidentiary Submission (Volume 15)

which was every day for a month and included training on payroll, use of the payroll system, safety classes, team relations, and team building. (Kessler Dep., pp. 54-55).	
608. Kessler resigned her employment at MBUSI in May, 2009. (Kessler Resignation). ¹⁷	Undisputed.
609. As a GL at MBUSI, Kessler earned at least \$455.00 per week in salary. (Kessler RFA #41).	Undisputed.
610. Kessler used her best judgment in performing all of her GL job duties. (Kessler RFA #23).	Undisputed.
611. Kessler fulfilled all of the roles and responsibilities of her GL position. (Kessler RFA #24).	Kessler did not develop and implement an annual plan, overall continuous improvement was handled by a separate team, Kessler had limits on what she could do on managing attendance, and there was limited training that Kessler could provide for her TMs. (Kessler Dep., pp. 120-22).
612. As GL, Kessler was responsible for her group making the customer happy which was the next group down the Line. (Kessler Dep., pp. 193-94).	Undisputed.
613. Kessler tried to make sure her group did their tasks in a way that the customer or the next group down the Line was satisfied. (Kessler Dep., p. 194).	Undisputed.
614. As GL, Kessler made sure that her TMs followed the SMPs to ensure quality. (Kessler Dep., p. 114).	Undisputed.
615. As GL, Kessler observed the TMs and TLs performing their jobs. (Kessler Dep., pp. 110, 112).	Undisputed.
616. Kessler believes that she created enthusiasm in her group. (Kessler Dep., pp. 211-12).	Undisputed.
617. Kessler agreed that she was responsible for improving her group. (Kessler Dep., p. 214).	It is not Kessler's responsibility if a defect gets by her. (Kessler Dep., p. 49).
618. Kessler believed that she did what was necessary to improve the area in which her group worked. (Kessler Dep., p. 214).	Undisputed.
619. Kessler coached her TLs in their responsibilities. (Kessler Dep., p. 217).	Undisputed.
620. It was Kessler's responsibility to make sure her group was properly trained. (Kessler Dep., p. 209).	Kessler does not have to make sure that TMs have the proper training. The TMs don't have any training needs. (Kessler Dep., pp. 110-111).

¹⁷ Penny Kessler Resignation Letter is attached as Ex. 187 to MBUSI's Evidentiary Submission (Volume 15).

621. Kessler was responsible for making sure that her group started on time and left on time. (Kessler Dep., p. 213).	Undisputed.
622. Kessler agrees with her 2007 performance appraisal that she led her group to achieve satisfactory SQDCM goals. (Kessler Dep., p. 200).	Undisputed.
623. As GL, Kessler was responsible for following the Company's objectives which included that a GL manage their Line. (Kessler Dep., p. 116).	Undisputed.
624. The GL Roles and Responsibilities Card accurately describes the roles and responsibilities of a GL except Kessler did not develop and implement an annual plan, overall continuous improvement was handled by a separate team, Kessler had limits on what she could do on managing attendance, and there was limited training that Kessler could provide for her TMs. (Kessler Dep., pp. 120-22).	Undisputed.
625. Kessler led her group in meeting company standards; and she used leadership skills in her GL position. (Kessler RFA ##25 & 26).	Undisputed.
626. Kessler ensured that company policies and work rules were enforced in her group. (Kessler RFA #14).	Undisputed.
627. Kessler believes she did a good job of directing TMs as to Company policies and procedures. (Kessler Dep., p. 207).	Misstates the witness's testimony. Kessler believes she did a good job of directing company policies. They give her a policy book with guidelines, and attendance is mainly where you interact with it. (Kessler Dep., p. 207).
628. One of Kessler's strengths as a GL was working with her team and she had fewer problems with HR than most GLs. (Kessler Dep., p. 59).	Undisputed.
629. As GL, Kessler would get her TMs to talk and work out disagreements. (Kessler Dep., p. 61).	Undisputed.
630. Kessler made the decision to contact HR if necessary. (Kessler Dep., p. 62).	In a situation where one employee threatened another, Kessler made the decision to contact HR. (Kessler Dep., p. 62).
631. As GL, Kessler issued discipline to a TM who failed to perform a part of his process for almost four hours. (Kessler Dep., p. 248).	It is up to HR to call you to give discipline whenever they are free. (Kessler Dep., pp. 247 - 48). Kessler can write a CPR but it has to be approved to go forward. It doesn't always get approved. (Kessler Dep., p. 73).
632. Kessler completed a performance evaluation on each TM in her group annually. (Kessler Dep., p. 76).	Undisputed.

633. On the performance evaluations, Kessler checked needs development or ready for promotion to the next level and Kessler's opinion was given consideration and normally was followed in determining if the TL or TM was promoted. (Kessler Dep., p. 187; Jones Decl. ¶¶ 31-32).	If Kessler checked "needs development," this would not block the TM from being eligible for promotion. (Kessler Dep., p. 187).
634. If Kessler gave a TM or TL a not satisfactory rating in any area of the evaluation other than attendance, the TM or TL was not eligible for promotion. (Jones Decl. ¶ 33).	If Kessler checked "needs development," this would not block the TM from being eligible for promotion. (Kessler Dep., p. 187).
635. As GL, Kessler had to know how the attendance policy worked and who to go to in order to get various approvals. (Kessler Dep., p. 207).	Undisputed.
636. As GL, Kessler maintained the attendance calendar for her group. (Kessler Dep., p. 181).	Undisputed.
637. As GL, Kessler kept up with her TMs' attendance. (Kessler Dep., p. 71).	Undisputed.
638. Kessler kept track of occurrences under the attendance policy for TMs in her group. (Kessler Dep., p. 72).	Undisputed.
639. If the TM had too many occurrences, Kessler would write the CPR and forward it for approval. (Kessler Dep., p. 73).	Kessler can write a CPR but it has to be approved to go forward. It doesn't always get approved. (Kessler Dep., p. 73).
640. Kessler checked the call-ins to see who was not going to show up. (Kessler Dep., p. 181).	Undisputed.
641. Kessler kept track of hours worked and vacation for her TMs. (Kessler Dep., p. 56).	Undisputed.
642. Kessler made the decision to approve TMs' vacation requests so long as they were in standard. (Kessler Dep., p. 122).	Undisputed.
643. As GL, Kessler looked over the hours TMs put down that they worked and made sure it matched what they had done before she inputted their time into the system. (Kessler Dep., pp. 149-50).	Undisputed.
644. Kessler ensured that her group was working safely and she monitored the environment for safety hazards. (Kessler RFA #17).	Undisputed.
645. As GL, Kessler was required to look for safety related issues. (Kessler Dep., p. 57).	Undisputed.
646. As GL, Kessler made safety observations on a weekly basis. (Kessler Dep., p. 153).	Undisputed.
647. As GL, Kessler filled out a safety card every week. (Kessler Dep., pp. 57-58).	Undisputed.
648. As GL, Kessler completed problem solving	Undisputed.

sheets. (Kessler Dep., p. 166).	
649. Normally the TL wrote up an SMP, Kessler reviewed it and then recommended it up the Line. (Kessler Dep., pp. 90-91).	Undisputed.
650. If there was an issue with the rotation schedule, Kessler reviewed it. (Kessler Dep., p. 68).	TLs handle the rotation schedule. Kessler does not approve them. She does not know if she is supposed to review them. If there is an issue. (Kessler Dep., pp. 67-68).
651. As GL, Kessler checked her call-in line in the morning to determine who would be absent from work. (Kessler Dep., p. 86).	Undisputed.
652. Kessler complied with the pre-shift requirements, including being present in her Team Room, updating the attendance board, checking call ins and attending the start up meeting. (Kessler Dep., p. 93; Kessler Dep. Ex. 2).	Undisputed.
653. Kessler discussed manpower needs at the meeting with the AM and other GLs before the shift started. (Kessler Dep., p. 87).	Undisputed.
654. As GL, Kessler had a five minute communication meeting based upon SQDCM with her group where she communicated such information to her TMs and TLs. (Kessler Dep., pp. 94-95).	Undisputed.
655. After the Line started at 6:20, Kessler went around and made sure that all the boards were updated, including the feedback board and the production board and the attendance board, that everything was set, she made sure her TMs had their tally sheets and then she checked vehicles. (Kessler Dep., pp. 108-09, 234-35).	Undisputed.
656. Kessler checked on the vehicles in her group at the end of the Line and if she found a defect, she almost always had a TM come forward to look at the issue and repair it, but if she was short handed, she repaired it and then verbally fed it back. (Kessler Dep., pp. 238-40).	Undisputed.
657. When Kessler checked vehicles, she immediately fed back any issue to a TM to try to keep the problem from happening again. (Kessler Dep., p. 98).	Undisputed.
658. Kessler updated the board at nine o'clock and had a nine o'clock meeting. (Kessler Dep., pp. 240-41).	Undisputed.

659. During the third rotation after lunch, Kessler went over to the E-coat deck to check vehicles, talked to her TMs and saw if they needed any help and then she went to Paint 1 Dent Doctors and did the same thing. (Kessler Dep., pp. 242-43).	Undisputed.
660. During the fourth rotation, Kessler loaded any vehicles that were left off the Line back on the Line and then checked vehicles until the end of the day. (Kessler Dep., p. 243).	Undisputed.
661. At the end of the day, Kessler walked the Line and made sure that everyone had put everything away, all the paperwork had been filled out, made sure there were no messes, and then she did her shift log. (Kessler Dep., p. 244).	Undisputed.
662. At the end of the shift, Kessler normally was in the Team Center where she observed her TMs and she completed the daily turnover log. (Kessler Dep., pp. 102-03).	Undisputed.
663. Kessler cannot remember the last time she had to actually work a station. (Kessler Dep., p. 196).	Undisputed.
	It is up to the AM to decide what happens if a TM is given work restrictions. (Kessler Dep., pp. 66-67).
	The TL schedules the rotations. (Kessler Dep., p. 67).
	The AM decides what to do if manpower issues arise. (Kessler Dep., p. 87).
	The TL tells the TM what quality issues to look at for. (Kessler Dep., p. 96).
	Kessler does not have to tell TMs what quality issues to focus on. Most everything is already written down. (Kessler Dep., p. 98).
I. GARY OGLESBY	
664. Gary Oglesby ("Oglesby") began employment at MBUSI on July 8, 1996 as a TM in Quality. (Oglesby Dep., pp. 12, 24). ¹⁸	Undisputed.
665. In 1998, Oglesby was promoted to TL in Quality and received a pay raise. (Oglesby Dep., pp.	Undisputed.

¹⁸ The Deposition of Gary Oglesby and exhibits to the deposition are attached as Ex. 188 to MBUSI's Evidentiary Submission (Volume 15).

25, 28-29).	
666. As a TL, if a TM's performance was unsatisfactory, Oglesby turned it over to this GL to correct and instruct the TM. (Oglesby Dep., p. 31).	Undisputed.
667. Oglesby was promoted to GL in Quality on October 23, 2000. (Oglesby Dep., pp. 37-38; Oglesby Dep. Ex. 1).	Undisputed.
668. As a GL at MBUSI, Oglesby earns at least \$455.00 per week in salary. (Oglesby RFA #41). ¹⁹	Undisputed.
669. Oglesby attended Group Leader Academy which lasted a week and included leadership training. (Oglesby Dep., pp. 41-43).	Undisputed.
670. Oglesby also participated in the Group Leader Self Sufficiency Program. (Oglesby Dep., pp. 44-45).	Undisputed.
671. As GL, Oglesby attends monthly lunch box meetings with HR at which various Company policies and standards are covered. (Oglesby Dep., p. 49, 67).	Undisputed.
672. Oglesby needed to have knowledge of these policies so he can enforce them with his TMs. (Oglesby Dep., p. 49).	Oglesby does not solve problems in his group. He hands that off to his manager. (Oglesby Dep., p. 47).
673. Initially, Oglesby was GL for Receiving and Inspection for about a year to a year and a half and then he moved to GL over the End of Line Group. (Oglesby Dep., pp. 52-53).	Undisputed.
674. When Oglesby was a GL for the Receiving and Inspection Group, he had three teams, three TLs and twelve TMs. (Oglesby Dep., pp. 54-55).	Undisputed.
675. Oglesby's group in Receiving and Inspection was spread out throughout the entire facility. (Oglesby Dep., p. 56).	Undisputed.
676. On the Quality End of Line Group, Oglesby's group has three teams, three TLs, and twenty-four TMs. (Oglesby Dep., p. 58).	Undisputed.
677. Oglesby's Receiving and Inspection group covers an area that is at least a couple of football fields in size. (Oglesby Dep., p. 59).	Undisputed.
678. During his time as a GL, Oglesby spent a year	Undisputed.

¹⁹ Oglesby Responses to Requests for Admission are attached as Ex. 189 to MBUSI's Evidentiary Submission (Volume 15).

and a half in Germany as GL for the Null Series. (Oglesby Dep., p. 54).	
679. Oglesby supervises the TLs and TMs in his group. (Oglesby RFA #1).	Oglesby does not manage TMs. (Oglesby Dep., p. 48).
680. A Manager or AM is not always present in Oglesby's group, and he leads his group independently of his Manager or AM. (Oglesby RFA #33).	Undisputed.
681. Oglesby leads his group and is evaluated based on leadership competencies. (Oglesby Dep., pp. 143, 151-52).	Undisputed.
682. Oglesby is responsible for accomplishing MBUSI's goals and targets. (Oglesby Dep., p. 147).	Oglesby does not manage the line or his operational unit and is not responsible for accomplishing the company's goals and targets. (Oglesby Dep., p. 144).
683. Oglesby takes control of situations in his area that arise with his AM is absent. (Oglesby RFA #32).	Undisputed.
684. Oglesby gives work directions and assignments to the members of his group. (Oglesby RFA #2).	Oglesby does not manage TMs. (Oglesby Dep., p. 48).
685. Oglesby makes decisions about his group and carries out his plans for the group. (Oglesby RFA #35).	Most every decision comes from Oglesby's AM. Oglesby does not make the decisions that come out of his group as far as operations. (Oglesby Dep., pp. 144-45).
686. Oglesby directs his group in meeting the company's objectives for safety, product quality, accuracy, productivity, cost reduction, housekeeping, efficiency, training and team harmony. (Oglesby RFA #5).	Undisputed.
687. Oglesby leads his group in meeting company standards; he leads change in his group; and he uses leadership skills in his GL position. (Oglesby RFA ##25, 26 & 28).	Undisputed.
688. Oglesby shares his knowledge and experience with his group. (Oglesby RFA #30).	Undisputed.
689. Oglesby's duties differed from those performed by the TMs in his group. (Oglesby RFA #34).	Undisputed.
690. One of Oglesby's responsibilities as a GL is to help the morale of the group. (Oglesby Dep., p. 73).	Undisputed.
691. Oglesby initiates, facilitates and monitors problem solving in his group. (Oglesby RFA #12).	Oglesby does not solve problems in his group. He hands that off to his manager. (Oglesby Dep., p. 47).
692. Problem solving is an important skill for	Undisputed.

advancement to the GL position. (Oglesby Dep., p. 139).	
693. Oglesby ensures that production and quality goals are met in his group. (Oglesby RFA ##13 & 22).	Oglesby does not manage the line or his operational unit and is not responsible for accomplishing the company's goals and targets. (Oglesby Dep., p. 144).
694. Oglesby initiates continuous improvement activities in his group and leads the implementation of initiatives in his group. (Oglesby RFA #16).	Undisputed.
695. Oglesby shows and supports top performance in his group. (Oglesby RFA #29).	Undisputed.
696. Oglesby uses his best judgment in performing all of his GL job duties. (Oglesby RFA #23).	Undisputed.
697. Oglesby fulfills all of the roles and responsibilities of his GL position. (Oglesby RFA #24).	Oglesby does not manage TMs. (Oglesby Dep., p. 48). Oglesby does not solve problems in his group. He hands that off to his manager. (Oglesby Dep., p. 47).
698. Oglesby tries to accomplish all of the roles and responsibilities of a GL. (Oglesby Dep., pp. 147-48).	Oglesby does not manage TMs. (Oglesby Dep., p. 48). Oglesby does not solve problems in his group. He hands that off to his manager. (Oglesby Dep., p. 47).
699. Oglesby agrees that the GL job description's purpose is the purpose of the GL position with the exception of costs and he tries to accomplish that purpose. (Oglesby Dep., p. 149; Oglesby Dep. Ex. 22).	Undisputed.
700. The GL job description states the purpose of the GL position as follows: To direct Team Leaders and other Team Members in the execution of the teams' responsibilities. Responsible for the teams' achieving the Company's objectives for safety, product quality, accuracy, productivity, cost reduction, housekeeping, efficiency, training, and team harmony. (Oglesby Dep. Ex. 22).	Undisputed.
701. Oglesby agrees that the GL job description contains the essential functions of the GL position and he tries to accomplish those functions. (Oglesby Dep., pp. 149-50; Oglesby Dep. Ex. 22).	Oglesby does not manage TMs. (Oglesby Dep., p. 48).

702. The GL job description states the essential function of the GL position as follows:

To establish a positive role model for all team Members while assuring high standards of personal integrity and responsibility of Team Leaders. To maintain familiarity with all job duties and skill levels of the Team Leaders and Team Members in the area of responsibility and monitors events for problems which may affect team performance.

To conduct the routine performance assessment of Team Leaders and participate in the process of Team Member performance assessments.

To coordinate proper manning levels and allocation of Team Members in response to production demands, training completion, and compliance with MBUSI attendance and vacation policies.

To coordinate planning, creation, and maintenance of clean and orderly team areas, with appropriate visual controls and operating rules, in order to assure the safety, health, and productivity of Team Leader and Team Members. To support and cooperate with other groups while acting as primary communication link to Team Leaders for inter-team and inter-group issues and information.

To monitor and plan activities according to production schedule while assuring that teams maintain tooling, equipment, machines, parts, materials, supplies, and training flexibility in the area to support the achievement of production requirements while attaining the highest possible production quality.

To act as a technical problem solving resource in the assigned area by determining the root cause and countermeasure required, especially in the case of line-stop problems or other production interruptions.

To monitor the condition of team product to ensure the quality passed from the area meets all specifications and standards.

To ensure compliance with all company rules, policies, and practices, and takes appropriate corrective action when warranted, in accordance with the term[s] of the Team Member Handbook.

To collect, record, and analyze information while maintaining documentation regarding the activities in the assigned area as defined by MBUSI policy,

Oglesby does not manage TMs. (Oglesby Dep., p. 48).

procedure, or practice. (Oglesby Dep. Ex. 22).	
703. Before his shift starts, Oglesby will check his emails, that may include any kind of information about safety accidents, conditions, part shortages and in what direction they are going for the day. (Oglesby Dep., p. 66).	Undisputed.
704. Oglesby will communicate such information to his TMs. (Oglesby Dep., p. 66).	Undisputed.
705. Before the shift starts, Oglesby also reads the turnover logs from the other departments, memos coming out of HR, attends a start up meeting and lets his AM know about his manpower. (Oglesby Dep., p. 63).	Undisputed.
706. As GL, Oglesby is responsible for all SQDCM areas for his group. (Oglesby Dep., pp. 77-78).	Undisputed.
707. In the morning, Oglesby updates the SQDCM Board so that his TMs will have the most current information so they will know what is going on. (Oglesby Dep., p. 77).	Undisputed.
708. Oglesby then conducts a shift start up meeting and goes over information his teams needs to know, including HR issues. (Oglesby Dep., pp. 64-65).	Undisputed.
709. As GL, Oglesby tries to make sure his TMs are working efficiently and productively so overtime is minimized. (Oglesby Dep., p. 131).	Undisputed.
710. Oglesby spends most of his day walking his group and checking quality. (Oglesby Dep., p. 91).	Undisputed.
711. Oglesby's TLs work a lot closer with the TMs than he does. (Oglesby Dep., p. 73).	Undisputed.
712. When Oglesby walks his group, he observes his TMs' performance, helps any TMs that are having problems and gives feedback to his TMs. (Oglesby Dep., pp. 91-92).	Undisputed.
713. When Oglesby checks vehicles, he maintains his other GL responsibilities. (Oglesby Dep., p. 92).	Undisputed.
714. Oglesby spends about half his time walking his group and observing their performance and the other half checking vehicles. (Oglesby Dep., p. 94).	Undisputed.
715. As GL, Oglesby is contacted forty to fifty times a day by other GLs so they can work together to resolve a problem. (Oglesby Dep., pp. 99-100).	Undisputed.
716. Oglesby proposes countermeasures to his AM for approval and if they are approved, he instructs	Undisputed.

his TMs to perform the countermeasure and observes their compliance. (Oglesby Dep., p. 101).	
717. Oglesby will communicate information to the other shift and his TMs so problems do not repeat themselves. (Oglesby Dep., pp. 85-89).	Undisputed.
718. Oglesby does not complete a turnover log since they only run one shift, but when they ran two shifts, he did complete a turnover log. (Oglesby Dep., p. 74).	Undisputed.
719. It is important to communicate the information to the other shift that he includes in the turnover log. (Oglesby Dep., p. 75).	Undisputed.
720. Oglesby ensures that company policies and work rules are enforced in his group. (Oglesby RFA #14).	Oglesby does not manage TMs. (Oglesby Dep., p. 48).
721. Oglesby handles TM issues and conflicts in his group and decides when to involve higher management or Team Relations in an employee issue or conflict. (Oglesby RFA #18).	Undisputed.
722. Oglesby tries to work out conflicts between TMs within his group. (Oglesby Dep., p. 142).	Undisputed.
723. Oglesby strives to make sure that his TLs and TMs fulfill the roles and responsibilities for their position set out on the Roles and Responsibilities Card. (Oglesby Dep., pp. 140-41).	Undisputed.
724. Oglesby counsels TMs on performance, quality of work and conduct. (Oglesby RFA #9).	Oglesby does not manage TMs. (Oglesby Dep., p. 48).
725. As GL, Oglesby verbally corrects TMs' behavior if necessary. (Oglesby Dep., p. 141).	Oglesby does not manage TMs. (Oglesby Dep., p. 48).
726. Oglesby has the authority to initiate a CPR on a TM when he deems necessary. (Oglesby RFA #10).	Oglesby does not determine when a TMs conduct rises to the level that a CPR may be necessary. He takes this to his AM. (Oglesby Dep., pp. 142).
727. Oglesby decides what conduct to bring to his AM's attention for the issuance of a CPR. (Oglesby Dep., p. 142).	Undisputed.
728. Oglesby directs training and retraining in skills for TMs in his group, and he does so if he deems appropriate. (Oglesby RFA #19).	Undisputed.
729. As GL, Oglesby is responsible for making sure all TMs in his group have the proper training. (Oglesby Dep., p. 120).	Undisputed.
730. Oglesby wants his TMs trained on as many	Undisputed.

processes as possible so he can rotate them around. (Oglesby Dep., pp. 120-21).	
731. As GL, Oglesby will consult with his TMs about training plans that are developed for each TM. (Oglesby Dep., p. 123).	The TMs do the training plans. (Oglesby Dep., p.123).
732. As GL, Oglesby will sign off on a TM's daily training plan after observing to make sure they are performing as indicated. (Oglesby Dep., p. 125).	The TL completes the Daily Training Log. Oglesby verifies it. (Oglesby Dep., pp. 124-25).
733. As GL, if a TM has a quality or performance problem, Oglesby can send them back for additional training. (Oglesby Dep., p. 124).	Undisputed.
734. As GL, Oglesby verifies that his TMs are at the level represented on the Circle of Skills. (Oglesby Dep., pp. 122-23).	Undisputed.
735. Oglesby will observe the TL performing the process to make sure they are at their level indicated. (Oglesby Dep., pp. 122-23).	Undisputed.
736. As GL, Oglesby reviews the performance of each TM to ensure the accuracy of the Circle of Skills document before signing off on it. (Oglesby Dep., p. 124).	Undisputed.
737. If a quality issues leaves his group and is found by Audit, then he completes a 5 why form. (Oglesby Dep., p. 108).	Undisputed.
738. It is important to provide TMs feedback so problems do not reoccur. (Oglesby Dep., p. 115).	Undisputed.
739. Oglesby evaluates the performance of TMs and TLs in his group. (Oglesby RFA #6).	Undisputed.
740. Oglesby prepares performance evaluations for TM and TLs in his group once a year. (Oglesby Dep., p. 132).	Undisputed.
741. On the performance evaluation, Oglesby bases his satisfactory or not satisfactory rating on his observations of the TM's work performance. (Oglesby Dep., pp. 133-34).	Undisputed.
742. If Oglesby gives a TM or TL a not satisfactory in any area of the evaluation other than attendance, the TM or TL is not eligible for promotion. (Jones Decl. ¶ 33).	Undisputed.
743. Under the current position development steps, Oglesby includes suggestions for the TM's development. (Oglesby Dep., p. 134).	Undisputed.
744. Oglesby rates whether a TM needs development or is ready for the next level. (Oglesby	Undisputed.

Dep., pp. 134-35; Oglesby RFA #7).	
745. If Oglesby checked that the TM needs development, the TM would not be considered for promotion. (Oglesby Dep., p. 135).	Undisputed.
746. Oglesby's recommendation as to whether a TL or TM is ready for promotion is given consideration and normally is followed in determining if the TL or TM will be promoted. (Jones Decl. ¶¶ 31-32).	Undisputed.
747. Oglesby manages attendance in his group and ensures that his group is properly staffed. (Oglesby RFA #3).	Oglesby tracks attendance by putting it on the board, observes manpower issues and reports them to his AM. (Oglesby Dep., pp. 62-63).
748. Oglesby manages vacation scheduling, timekeeping and attendance tracking for the members of his group. (Oglesby RFA #4).	Oglesby does not agree that he manages his operational unit. Oglesby doesn't manage anything without his AM. Most every decision comes from his AM. He does not make the decisions that come out of his group as far as operations. He does not set quality standards (Oglesby Dep., pp. 144-45).
749. As GL, Oglesby keeps track of the attendance of his group and enters time for his TMs. (Oglesby Dep., p. 65).	Undisputed.
750. Oglesby usually enters times for his TMs and TLs after the shift ends. (Oglesby Dep., p. 76).	Undisputed.
751. As GL, Oglesby determines how to classify an absence based on MBUSI's policy. (Oglesby Dep., pp. 125-26).	Undisputed.
752. Oglesby approves vacation based on MBUSI's policy. (Oglesby Dep., p. 126).	Undisputed.
753. As GL, Oglesby can move TMs around between teams in his group. (Oglesby Dep., p. 63).	Undisputed.
754. Oglesby ensures that his group is working safely and he monitors the environment for safety hazards. (Oglesby RFA #17).	Undisputed.
755. Oglesby sees to it that his TMs comply with MBUSI safety policies and procedures. (Oglesby Dep., p. 103).	Oglesby does not manage TMs. (Oglesby Dep., p. 48).
756. If a TM violates a safety policy, Oglesby will first counsel the TM, then document it, and if it continues, escalate the issue to his AM and the AM will determine whether a CPR is necessary. (Oglesby Dep., pp. 103-04).	Undisputed.
757. As GL, Oglesby will complete a Stop Audit card to highlight a safety issue. (Oglesby Dep., pp. 83-84).	Undisputed.

758. As GL, Oglesby accounts for his TMs in the event of a severe weather incident or evaluation. (Oglesby Dep., p. 48).	Undisputed.
759. If there is an injury, Oglesby calls Safety, he stays with the TM until Medical gets involved and then he prepares a report regarding the injury. (Oglesby Dep., pp. 104-05).	Undisputed.
760. In the report, they will document the injury and develop a countermeasure. (Oglesby Dep., pp. 105-06).	Undisputed.
761. As GL, Oglesby makes sure that TMs work within restrictions provided by Medical. (Oglesby Dep., p. 127).	Undisputed.
762. The only reasons why Oglesby does not believe he manages his group are because he does not set quality standards and in many instances, he must consult with his AM on decisions. (Oglesby Dep., pp. 145-46).	Oglesby does not agree that he manages his operational unit. Oglesby doesn't manage anything without his AM. Most every decision comes from his AM. He does not make the decisions that come out of his group as far as operations. He does not set quality standards. (Oglesby Dep.. Pp. 144-45).

J. KELLY PITMAN	
763. Kelly Pitman ("Pitman") began employment at MBUSI in 1997. (Pitman Dep., pp. 14, 17, 20). ²⁰	Undisputed.
764. On September 6, 2004, Pitman was promoted to GL of Door Line, Plant 2. (Pitman Dep., pp. 20-21, 23-24; Pitman Dep. Ex. 1).	Undisputed.
765. In January, 2005, Pitman became GL for Assembly, Plant 2, Final 4. (Pitman Dep., p. 25; Banta Decl. ¶ 6). ²¹	Undisputed.
766. On September 1, 2006, Pitman became Acting AM for Assembly, Plant 2. (Pitman Dep., p. 124; Banta Decl. ¶ 7; Banta Decl. Ex. B (LEAD Evaluation 2007, p. 2)).	Undisputed.
767. On March 1, 2007, Pitman was promoted to AM, Assembly, Plant 2. (Pitman Dep., p. 29; Banta Decl. ¶ 8; Banta Decl. Ex. C (Transaction Notice)).	Undisputed.
768. In September, 2007, Pitman transferred to AM,	Undisputed.

²⁰ The Deposition of Kelly Pitman and exhibits to the deposition are attached as Ex. 39 to MBUSI's Evidentiary Submission (Volume 4).

²¹ The Declaration of Valerie Banta is attached as Ex. 25 to MBUSI's Evidentiary Submission (Volume 2).

Supplier Quality Engineering, where he worked until he resigned from employment with MBUSI on March 21, 2008. (Pitman Dep., pp. 14, 30; Banta Decl. ¶¶ 9-10; Banta Decl. Ex. D (Resignation Letter)).	
769. As a GL, Pitman earned at least \$455.00 per week in salary. (Pitman RFA #41). ²²	Undisputed.
770. As the GL for Final Line, Pitman had approximately 14 to 16 TMs and TLs in his group. (Pitman Dep., pp. 26-27).	Undisputed.
771. As a GL, Pitman supervised the TMs and TLs in his group. (Pitman RFA #1).	Pitman does not supervise team members or team leaders. (Pitman Dep., p. 77). All he did was observe and document. (Pitman Dep., p. 77). Pitman is not responsible for ensuring that TMs follow standard methods and procedures. (Pitman Dep., p 78). Supervisor is Mercedes' term. (Pitman Dep., p. 24). This may not be the legal term of supervisor. A GL does not have the ability to make a decision for someone. (Pitman Dep., p. 119).
772. When he worked at MBUSI and someone asked him what he did, he probably referred to himself as a supervisor. (Pitman Dep., p. 117).	Supervisor is Mercedes' term. (Pitman Dep., p. 24). This may not be the legal term of supervisor. A GL does not have the ability to make a decision for someone. (Pitman Dep., p. 119).
773. A Manager or AM was not always present in his group, and he led his group independently of his Manager or AM. (Pitman Dep., pp. 27-28; Pitman RFA #33).	Undisputed.
774. He took control of situations in his area that arose when the AM was absent. (Pitman RFA #32).	Undisputed.
775. He gave work directions and assignments to the members of his group. (Pitman RFA #2).	Pitman does not recall giving work directions and assignments to the members of his group. (Pitman Dep., pp. 128-129).
776. He directed his group in meeting the company's objectives for safety product quality, accuracy, productivity, cost reduction, housekeeping, efficiency, training and team harmony. (Pitman RFA #5)	Pitman did not direct his group in meeting the company's objectives for safety, quality, delivery, cost, or morale. (Pitman Dep., p. 129).

²²

Pitman Responses to Requests for Admission are attached as Ex. 40 to MBUSI's Evidentiary Submission (Volume 4).

777. As a GL, he performed duties that differed from those performed by the TMs in his group. (Pitman Dep., p. 134; Pitman RFA #34).	Undisputed.
778. He was not assigned to a station. (Pitman Dep., p. 94).	Undisputed.
779. Not everyone could walk up and down the line, but GLs could. (Pitman Dep., p. 95).	Undisputed.
780. Pitman testified that his primary duties as a GL were to observe TMs and inspect the vehicles. (Pitman Dep., p. 28).	Undisputed.
781. Pitman testified that he spent the first hour of production inspecting the quality of vehicles, spent the second hour of production walking the line and talking with his TMs, and spent the majority of the rest of the day inspecting the quality of vehicles and responding to line calls by TMs. (Pitman Dep., pp. 34-35, 58-60).	Undisputed.
782. Pitman testified that he spent at least 75% of the day inspecting quality and feeding back quality issues to the TMs. (Pitman Dep., pp. 59, 72-73).	Undisputed.
783. MBUSI held him responsible for the operation of his group at all times including when he was checking quality. (Pitman Dep., p. 130).	Pitman was not responsible for the operation of his group at all times while he was on duty, even when checking quality. (Pitman Dep., p. 130).
784. Pitman observed TMs while he inspected quality. (Pitman Dep., p. 63).	Undisputed.
785. He was not stationed in one particular spot 75% of the day while checking quality, and he might check it at the end of his area or somewhere else. (Pitman Dep., p. 73).	Undisputed.
786. Inspecting quality allowed him to know if there was a quality issue and that he needed to observe the TMs. (Pitman Dep., pp. 63-64).	Undisputed.
787. When he found a quality issue, he investigated the issue to find out if the problem was with a part or with a TM's performance. (Pitman Dep., pp. 63-64, 72).	Undisputed.
788. To investigate the issue, he observed the TMs perform at their stations and asked the TMs questions. (Pitman Dep., pp. 64, 71-72).	Undisputed.
789. If Pitman found by observing that the problem was with a part then he would escalate the issue to Supplier Quality, and if the problem was because of a TM's performance, he would feed that back to the TM. (Pitman Dep., pp. 64-65, 69).	Undisputed.

790. Part of Pitman's observation of his TMs was to see if they were following the process. (Pitman Dep., p. 70).	Undisputed.
791. When he observed them, he had the SMPs and JESs in front of him and would watch the TMs to see that they followed the SMPs and JESs step by step. (Pitman Dep., pp. 70-71, 78).	Undisputed.
792. If they did not follow the process, he would inform them of that. (Pitman Dep., p. 71).	Undisputed.
793. Pitman documented when TMs did not follow processes, and if they continued to not follow the processes, he would consult with the AM about the next step. (Pitman Dep., pp. 75, 79).	Undisputed.
794. The AM would tell him to call HR and to start a CPR. (Pitman Dep., p. 75).	Undisputed.
795. As part of his observation of TMs, Pitman made sure TMs were following directions and standards that he communicated to them. (Pitman Dep., p. 68).	Pitman cannot ensure team members follow company policy. All he did was observe and document. (Pitman Dep., p. 77). Pitman cannot ensure that TMs follow company guidelines and policies. (Pitman Dep., p. 78).
796. He was responsible for observing TMs and making sure they followed the standards in the shop. (Pitman Dep., p. 74).	Pitman cannot ensure team members follow company policy. All he did was observe and document. (Pitman Dep., p. 77). Pitman cannot ensure that TMs follow company guidelines and policies. (Pitman Dep., p. 78).
797. If the TMs did not follow the standards, he would address it with the TMs, tell them what the standards were, and tell them that the company expected them to follow the SMP exactly. (Pitman Dep., p. 74).	Undisputed.
798. If they did not follow the standard, they were in violation of the policies and procedures of MBUSI. (Pitman Dep., p. 74).	Undisputed.
799. Pitman counseled TMs and TLs on performance, quality of work and conduct. (Pitman RFA #9).	Undisputed.
800. He ensured that company policies and work rules were enforced in his group. (Pitman Dep., p. 131; Pitman RFA #14).	Pitman cannot ensure team members follow company policy. All he did was observe and document. (Pitman Dep., p. 77). Pitman cannot ensure that TMs follow company guidelines and policies. (Pitman Dep., p. 78).
801. When Pitman observed TMs and informed them that they were not following SMPs, the natural result was that he ensured company policies were	All he did was observe and document. (Pitman Dep., p. 77). Pitman cannot ensure that TMs follow company guidelines and policies. (Pitman

followed. (Pitman Dep., p. 78).	Dep., p. 78).
802. When Pitman walked up and down the line and observed his TMs, he made sure they were doing well. (Pitman Dep., p. 95).	Undisputed.
803. When there was downtime, he informed the TMs as to what needed to be done. (Pitman Dep., p. 135).	Pitman did not inform the TMs or TLs what to do during downtime. The group had a checklist. There were guidelines. They knew what to do. (Pitman Dep., 134-135). There is an unwritten policy in the whole shop that during downtime, all team members, team leaders, and the group leader would perform walk backs checking quality and starting to 5S the shop. (Pitman Dep., pp. 134-135).
804. He observed them to make sure they did what they were supposed to do during downtime, and if they did not do what they were supposed to do, he would address it. (Pitman Dep., pp. 135-36).	Undisputed.
805. Pitman ensured that his group worked safely, and he monitored the environment for safety hazards. (Pitman RFA #17).	Safety is everyone's responsibility. (Pitman Dep., p. 93).
806. When he was observing his TMs, he would check to make sure they were wearing the appropriate PPE and were not in awkward ergonomic situations. (Pitman Dep., pp. 92-94).	Undisputed.
807. When he had a TM injured on the job, he took them to the Medical Department. (Pitman Dep., p. 65).	Undisputed.
808. He and the AM would investigate the incident to find out what happened and to prevent it from happening again. (Pitman Dep., p. 66).	Undisputed.
809. They would ask the TM what happened. (Pitman Dep., p. 65).	Undisputed.
810. He would go to the site of the occurrence and review with the TM and the witnesses what happened. (Pitman Dep., pp. 65-66).	Pitman and the AM would review with the TM and the witnesses what happened. (Pitman Dep., p. 65-66).
811. He would work with Process Engineering to find a solution for how to prevent the occurrence from happening again. (Pitman Dep., p. 66).	Undisputed.
812. If there needed to be a change in process, several people, including Pitman, Engineering, Safety and Managers would be involved. (Pitman Dep., pp. 66-67).	Undisputed.
813. As a countermeasure to the incident happening again, Pitman shared with the group what happened	Undisputed.

and what had been done to prevent its reoccurrence. (Pitman Dep., pp. 67-68).	
814. Every day, Pitman read the daily turnover log from the prior shift and prepared his own turnover log for his group. (Pitman Dep., pp. 34-37).	Undisputed.
815. On the turnover log, the GLs reported on SQDCM, including safety issues, quality issues, parts issues, whether they met their production numbers for the day, overtime worked, scrap incurred and attendance for the group. (Pitman Dep., pp. 36, 41).	Undisputed.
816. Every day, Pitman checked the quality issues that came from his group the day before. (Pitman Dep., pp. 34, 36-37).	Pitman pulled the quality numbers from the daily turnover log from the day before. (Pitman Dep., p. 34).
817. For the major quality issues, Pitman tried to determine the cause of the issue by observing the TMs to see if they were following the SMP and if they were not, he informed them they needed to follow the SMP. (Pitman Dep., pp. 39-40).	For major quality issues, Pitman would go to the source, observe and get the appropriate people involved. (Pitman Dep., pp. 39-40).
818. "[Pitman's] job was to ensure that the team member was following the SMP, JES." (Pitman Dep., p. 40).	Undisputed.
819. Following the SMP ensured quality. (Pitman Dep., p. 41).	Undisputed.
820. If the quality issue was not caused by the TM, Pitman involved the appropriate persons outside of his group, such as Process Engineering or Supplier Quality. (Pitman Dep., p. 40).	Undisputed.
821. In investigating quality issues, Pitman used the four-Ms: man, material, machine, method. (Pitman Dep., p. 40).	Undisputed.
822. Pitman ensured that quality and production goals were met in his group. (Pitman RFA ##13 & 22).	Undisputed.
823. Pitman also reported SQDCM on a board in the team center to communicate to the TMs in his group the SQDCM issues. (Pitman Dep., pp. 41-42).	Undisputed.
824. Pitman annually evaluated the performance of TMs and TLs in his group. (Pitman Dep., p. 42; Pitman RFA #6).	Undisputed.
825. Pitman evaluated whether TMs met SMPs and also certain measurements based on his observation of the TMs. (Pitman Dep., pp. 42-43).	Undisputed.
826. If Pitman rated a TM or TL as not satisfactory	Pitman does not know whether a TM or TL can

in any area of the evaluation other than attendance, the TM or TL was not eligible for promotion. (Jones Decl. ¶ 33).	move to the next level without the GL marking that he or she is ready. (Pitman Dep., p. 40).
827. Pitman provided an opinion as to whether TMs and TLs in his group were ready for promotion and that opinion is a factor in the decision as to whether the TM or TL will be promoted. (Pitman Dep., pp. 43-44; Pitman RFA ##8 & 9).	Undisputed.
828. Pitman's opinion as to whether TMs and TLs in his group were ready for promotion was given consideration and normally was followed. (Jones Decl. ¶¶ 31-32).	Pitman does not know whether a TM or TL can move to the next level without the GL marking that he or she is ready. (Pitman Dep., p. 40).
829. Pitman does not recall any TM or TL being promoted without him recommending the TM or TL for the next level. (Pitman Dep., p. 44).	Undisputed.
830. Pitman showed and supported top performance in his group. (Pitman Dep., p. 123; Pitman RFA #29).	Pitman cannot say whether or not he supported top performance in his group. (Pitman Dep., p. 122-123).
831. It was important to him to develop the TMs in his group because it helped the company. (Pitman Dep., p. 117).	It was important to Pitman to have as many people cross-trained as possible because it benefits the company. (Pitman Dep., p. 117).
832. Pitman managed vacation scheduling, timekeeping and attendance tracking for the members of his group. (Pitman Dep., pp. 44-45; Pitman RFA #4).	As a GL, Pitman would update information on an attendance board so that the AMs had an overview and could make manpower decisions. (Pitman Dep., pp. 54- 55). As an AM, Pittman managed manpower. As an AM, he reviewed attendance. (Pitman Dep., p. 30). If there was a problem because people were on vacation, Pitman would escalate it. (Pitman Dep., p. 115).
833. Pitman inputted time into the system for his group, and he signed off on time sheets for temporary employees to confirm the employees worked the time that was recorded. (Pitman Dep., p. 85).	Undisputed.
834. He documented TMs that did not show up to work and informed managers and HR when TMs abused the MBUSI system or policies. (Pitman Dep., pp. 44-45).	Undisputed.
835. TMs submitted vacation requests to Pitman, and he approved them according to MBUSI policy. (Pitman Dep., p. 45).	Undisputed.
836. When a TM had a certain number of absences	Undisputed.

or tardies, the TM would receive occurrences under the attendance policy. (Pitman Dep., p. 46).	
837. Pitman tracked those occurrences, and when the TM had a certain number of occurrences, Pitman would initiate a CPR. (Pitman Dep., pp. 45-47).	Pitman did not initiate a CPR. He would initiate the documentation by filling out a form with the date of the occurrence, what occurred, and the number of occurrences which resulted based on company policy. He submitted the form to his AM and HR for approval. The TM would not get a corrective action until it was approved by management and HR. (Pitman Dep., p. 46).
838. As a GL, Pitman had the authority to initiate a CPR on a TM when he deemed necessary. (Pitman RFA #10).	Pitman did not initiate a CPR. He would initiate the documentation by filling out a form with the date of the occurrence, what occurred, and the number of occurrences which resulted, based on company policy. He submitted the form to his AM and HR for approval. The TM would not get a corrective action until it was approved by management and HR. (Pitman Dep., p. 46).
839. Pitman presented the CPR to the TM with the AM and HR present. (Pitman Dep., pp. 47-48).	Undisputed.
840. Pitman kept individual files for the TMs in his group with items such as attendance, occurrences, doctor excuses, medical information, disciplinary actions and performance related issues. (Pitman Dep., p. 128).	Undisputed.
841. Pitman managed attendance in his group and ensured that his group was properly staffed. (Pitman RFA #3).	As a GL, Pitman would update information on an attendance board so that the AMs had an overview and could make manpower decisions. The AMs would make manpower decisions. (Pitman Dep., pp. 54- 55). As an AM, Pittman managed manpower. As an AM, he reviewed attendance, compared expected manpower to actual manpower, filled in any holes, and move people from one line to another. (Pitman Dep., p. 30).
842. He used the board on which he tracked attendance and the attendance policies to help him determine if he would be short on manpower. (Pitman Dep., pp. 51-52).	The attendance board was for watching manpower. It is used as a visual tool. Pitman would update information on an attendance board so that the AMs had an overview and could make manpower decisions. (Pitman Dep., p. 54-55).
843. Every day, Pitman checked to see if any TMs in his group called off of work and compared it to the	Undisputed.

attendance board to know if there were any unexpected absences or tardies in his group. (Pitman Dep., pp. 34, 52).	
844. Pitman could shift manpower around his group (i.e., TMs from team to team) as long as the TMs were trained at the proper level in the Circle of Skills training plan. (Pitman Dep., pp. 82-84).	Undisputed.
845. Every morning, Pitman met with the GLs and AMs to discuss manpower, quality issues, the focus of the day (meaning where trends were going and how they needed to resolve them) and what actions they were to take during the shift to achieve what MBUSI wanted to be achieved. (Pitman Dep., pp. 34, 53-56).	Undisputed.
846. The GLs including Pitman would provide information about the manpower in each of their groups to the AMs so that the AMs could move TMs among groups if needed. (Pitman Dep., pp. 54-55).	Undisputed.
847. Pitman would take the information from the meeting with the AMs and GLs and relay it to his group in a daily start-up meeting. (Pitman Dep., pp. 34, 56).	Undisputed.
848. After Pitman communicated the direction for the day to his group, he would observe his TMs to ensure they were following the direction. (Pitman Dep., p. 56).	The direction for the day was provided by the AM. Pitman would relay the AM's direction at the morning meeting. (Pitman Dep., pp. 55 - 56).
849. If a TM was not performing correctly, he would provide feedback to the TM. (Pitman Dep., p. 56).	Undisputed.
850. Pitman also discussed SQDCM with his group in the daily start-up meeting that he conducted. (Pitman Dep., p. 57).	Undisputed.
851. Pitman initiated, facilitated and monitored problem solving in his group. (Pitman RFA #12).	Undisputed.
852. Pitman initiated continuous improvement activities in his group and led the implementation of initiatives in his group. (Pitman Dep., pp. 116-17; Pitman RFA #16).	Pitman can initiate certain improvements, but he cannot implement them. (Pitman Dep., pp. 116-117).
853. He shared his knowledge and experience with the group. (Pitman Dep., p. 123; Pitman RFA #30).	Undisputed.
854. Pitman could write or revise SMPs and JESs. (Pitman Dep., p. 79).	Revisions must be signed off on by the PE, other GL and the AM. (Pitman Dep., p. 79). . Pitman could not change the order or reverse the order processes. If Pitman thought an SMP needed to be modified, he would get the PE group because

	they are the experts in the process. (Pitman Dep., p. 79-80).
855. If he felt a process needed to be changed, he called the Process Engineers because they knew the impact of the change. (Pitman Dep., p. 80).	Undisputed.
856. No process change was made in Pitman's group unless Pitman signed off on it. (Pitman Dep., p. 81).	All process changes must be signed off on by everyone - the PE, other GL and the AM. (Pitman Dep., p. 79).
857. Pitman testified that the only time he worked a process on the line was if there was a trial on a new process or he would have to fill in because there was a manpower issue and no TMs or TLs were available. (Pitman Dep., pp. 88-92).	Misstates the witness's testimony. Pitman would work the processes on the line for a trial, and to cover if there were manpower issues. He cannot say if there were any other reasons to work a process on the line. (Pitman Dep., pp. 89-91).
858. Pitman stated that GLs performed trials on new processes to see if the process was capable of being done in a certain amount of time "because if the group leader can do it, it's doable because group leaders don't do it every day -- every process every day." (Pitman Dep., p. 90).	Undisputed.
859. Pitman does not know and cannot estimate how often he performed a process. (Pitman Dep., pp. 88, 92).	Undisputed.
860. As a GL, Pitman could direct training and retraining in skills for TMs in his group, and he did so if he deemed appropriate. (Pitman RFA #19).	Undisputed.
861. For a TM in Pitman's group to be able to work alone, Pitman had to verify based on his observation that the TM met all the criteria in the Circle of Skills four step training plan. (Pitman Dep., p. 82).	Undisputed.
862. Pitman handled employee issues and conflicts in his group and decided when to involve higher management or Team Relations in an employee issue or conflict. (Pitman Dep., pp. 131-33; Pitman RFA #18).	Pitman did not handle employee issues or conflicts by himself. He involved HR and always had second opinions including the AM, except when there were attendance issues because those issues are cut and dry. Everything else was in interpretation of policy, so HR was always involved. (Pitman Dep., pp. 131-33).
863. He led his group in meeting company standards; he led change in his group; and he used leadership skills in his job. (Pitman RFA #25).	Undisputed.
864. He thought strategically and established direction for his group. (Pitman RFA #27).	The GL does not set direction or implement. The AM does this and creates an annual plan. (Pitman Dep., pp. 103-104).
865. He made decisions about his group and carried	As a GL, Pitman cannot make decisions that

out plans for his group. (Pitman Dep., pp. 115-16; Pitman RFA #35).	impact his group. (Pitman Dep., pp. 98 -99). He cannot make a decision as a GL. He takes what is laid out in the policy and applies it. (Pitman Dep., p. 101).
866. Pitman fulfilled all of the roles and responsibilities of his position as a GL, and he used his best judgment in performing all his GL job duties. (Pitman RFA ##23 & 24).	The roles and responsibilities sheet is not an accurate description of the role of a GL. A GL does not have the ability to autonomously impact MBUSI, or manage, develop, or implement. Pitman does not make decisions that impact the company or the group. The management team does this. (Pitman Dep., pp. 97-99). A GL cannot make a decision. He applies the policy. (Pitman Dep. p. 101).
867. The reason Pitman believes he was not a management employee at MBUSI is because he applied company policy. (Pitman Dep., p. 101).	Pitman was not a management employee because he cannot make decisions that impact the group or the company, does not manage, develop or implement, does not set the direction of the department, and does not create an annual plan. (Pitman Dep., pp. 97-99, 103-104).
K. FREDERICK RODGERS	
868. Frederick Rodgers ("Rodgers") <u>admitted in Response to a Request for Admission that he was properly classified under the FLSA as an exempt employee.</u> (Rodgers RFA #43). ²³	Undisputed.
869. Rodgers began employment at MBUSI in March, 1997 as a TM in Assembly. (Rodgers Dep., p. 13). ²⁴	Undisputed.
870. Around 1999, Rodgers was promoted to TL. (Rodgers Dep., p. 17).	
871. On February 4, 2008, Rodgers was promoted to GL for the Final 3 Line and his group included three TLs and seventeen TMs. (Rodgers Dep., pp. 18, 51; Rodgers Dep. Ex. 5).	Undisputed.
872. Rodgers was GL on Final 3 Assembly for three years, was on the Pilot Team for eighteen months, returned to Final 3 as GL for two years, and has been GL for Final 2 Line since 2009. (Rodgers	Undisputed.

²³ Rodgers Responses to Requests for Admission are attached as Ex. 190 to MBUSI's Evidentiary Submission (Volume 15).

²⁴ The Deposition of Frederick Rodgers and exhibits to the deposition are attached as Ex. 191 to MBUSI's Evidentiary Submission (Volume 15).

Dep., pp. 15-16).	
873. On the Final 2 Line, Rodgers' group has thirty-one TMs and five TLs and on the Final 3 Line, Rodgers' group had three TLs and seventeen TMs. (Rodgers Dep., p. 18).	Undisputed.
874. Rodgers attended Group Leader Academy. (Rodgers Dep., p. 20).	Undisputed.
875. Rodgers attended the Group Leader Self Sufficiency Program in which they were taught about the MPS system, how MBUSI works, and various processes. (Rodgers Dep., p. 189).	Undisputed.
876. Rodgers also had training regarding civil treatment, communication skills and leadership skills. (Rodgers Dep., pp. 190-91).	Undisputed.
877. Rodgers earns at least \$455.00 per week salary. (Rodgers RFA #41).	Undisputed.
878. Rodgers' response to MBUSI's requests for admissions which states that information is in the possession of defendant's attorneys refers to his declaration. (Rodgers Dep., pp. 47-48).	Undisputed.
879. Rodgers' declaration was truthful at the time he gave it. (Rodgers Dep., p. 39; Rodgers Dep. Ex. 3).	Undisputed.
880. Rodgers' primary duty as GL is supervision and management of his group. (Rodgers Dep. Ex. 3, ¶ 5).	<p>Rodgers' primary duty was not the supervision and management of his group, nor managing the performance of his group. He did not assign special duties, and did not manage the group with infrequent instruction or direction. (Rodgers Dep., pp. 40-42).</p> <p>Rodgers does not have any subordinates, is not a manager, and is not a supervisor. Nobody reports to Rodgers. (Rodgers Dep., pp. 56-57).</p> <p>Rodgers spends his day answering line calls, doing repairs, updating the calendar, holding morning meetings, and working the line. (Rodgers Dep., p. 62). If there is no TL, he works the station for the entire rotation. (Rodgers Dep., p. 179). He fills in on the line for bathroom breaks three or four times a day. (Rodgers Dep., p. 72).</p> <p>Rodgers makes 30-40 line repairs a day that can take 5 seconds to 30 minutes each. (Rodgers Dep., p. 86).</p> <p>Rodgers does not manage manpower, materials, machinery or methods. He did not manage</p>

	<p>staffing or attendance. (Rodgers Dep., p. 26). Rodgers does not make any calls at the plant. He escalates them to the management team. (Rodgers Dep., p. 57). Mr. Gilliam makes all of the decisions for Rodgers' group. (Rodgers Dep., p. 60).</p> <p>Rodgers does not have responsibility to the team members to give them clear direction or assignments. This authority is not given to him. (Rodgers Dep., pp. 58-59).</p> <p>Rodgers did not manage the line. Mr. Gilliam manages the line. (Rodgers Dep., pp. 61-62).</p> <p>Rodgers told his assistant manager that he was not managing or supervising. (Rodgers Dep., p. 62).</p> <p>The assistant manager manages the manpower in Rodgers' group. (Rodgers Dep., p. 26). Team leaders are responsible for making sure that the team members are trained. (Rodgers Dep., p. 29). Rodgers never directs that certain team members be retrained. (Rodgers Dep., p. 30).</p>
<p>881. The supervision and management of Rodgers' group is his most time consuming and important job duty. (Rodgers Dep. Ex. 3, ¶ 5).</p>	<p>Rodgers' primary duty was not the supervision and management of his group, nor managing the performance of his group. He did not assign special duties, and did not manage the group with infrequent instruction or direction. (Rodgers Dep., pp. 40-42).</p> <p>Rodgers does not have any subordinates, is not a manager, and is not a supervisor. (Rodgers Dep., pp. 56-57).</p> <p>Rodgers spends his day answering line calls, doing repairs, updating the calendar, holding morning meetings, and working the line. (Rodgers Dep., p. 62).</p> <p>Rodgers makes 30-40 line repairs a day that can take 5 seconds to 30 minutes each. (Rodgers Dep., p. 86).</p> <p>Rodgers does not make any calls at the plant. He escalates them to the management team. (Rodgers Dep., p. 57). Mr. Gilliam makes all of the decisions for Rodgers' group. (Rodgers Dep., p. 60).</p> <p>Rodgers does not have responsibility to the team members to give them clear direction or</p>

	<p>assignments. This authority is not given to him. He is not given the authority to give direction or assignments. (Rodgers Dep., pp. 58-59). Rodgers did not manage the line. Mr. Gilliam manages the line. (Rodgers Dep., pp. 61-62). Rodgers told his assistant manager that he was not managing or supervising. (Rodgers Dep., p. 62).</p> <p>The assistant manager manages the manpower in Rodgers' group. (Rodgers Dep., p. 26). Team leaders are responsible for making sure that the team members are trained. (Rodgers Dep., p. 29). He never directs that certain team members be retrained. (Rodgers Dep., p. 30).</p> <p>Rodgers makes 30 to 40 repairs on the line each day. (Rodgers Dep., p. 86).</p>
882. At all times, Rodgers remains responsible for the operations of his group. (Rodgers Dep. Ex. 3, ¶ 8).	<p>Rodgers is not responsible for the operations of his group. (Rodgers Dep., p. 25).</p> <p>The team leader is responsible for the performance of his team. (Rodgers Dep., p. 69).</p>
883. Rodgers spends more of his time supervising and managing his group than performing any other duties. (Rodgers RFA #39).	<p>Rodgers spends his day answering line calls, doing repairs, updating the calendar, holding morning meetings, and working the line. (Rodgers Dep., p. 62). Rodgers makes 30-40 line repairs a day that can take 5 seconds to 30 minutes each. (Rodgers Dep., p. 86).</p> <p>Rodgers' primary duty was not the supervision and management of his group, nor the managing the performance of his group. He did not assign special duties, and did not manage the group with infrequent instruction or direction. (Rodgers Dep., pp. 40-42). Rodgers does not have any subordinates, is not a manager, and is not a supervisor. (Rodgers Dep., pp. 56-57).</p> <p>Rodgers did not manage the line. Mr. Gilliam manages the line. (Rodgers Dep., pp. 61-62). Rodgers told his assistant manager that he was</p>

	not managing or supervising. (Rodgers Dep., p. 62).
884. Rodgers thinks strategically and establishes direction for his group. (Rodgers RFA #27).	Rodgers does not have responsibility to the team members to give them clear direction or assignments. This authority is not given to him. He is not given the authority to give direction or assignments. (Rodgers Dep., pp. 58-59).
885. Rodgers leads change in his group. (Rodgers RFA #28).	Undisputed.
886. Rodgers shows and supports top performance in his group. (Rodgers RFA #29).	Undisputed.
887. Rodgers takes control of situations in his area that arise when his AM is absent. (Rodgers RFA #32).	Undisputed.
888. Rodgers leads his group independently of his Manager and AM. (Rodgers RFA #33).	Rodgers does not make any calls at the plant. He escalates them to the management team. (Rodgers Dep., p. 57). Mr. Gilliam makes all of the decisions for Rodgers' group. (Rodgers Dep., p. 60). Rodgers does not have responsibility to the team members to give them clear direction or assignments. This authority is not given to him. He is not given the authority to give direction or assignments. (Rodgers Dep., pp. 58-59).
889. Rodgers performs duties that differ from those performed by the TMs in his group. (Rodgers RFA #34).	Undisputed.
890. Rodgers makes decisions about his group and carries out plans for his group. (Rodgers RFA #35).	Rodgers does not make any calls at the plant. He escalates them to the management team. (Rodgers Dep., p. 57). Mr. Gilliam makes all of the decisions for Rodgers' group. (Rodgers Dep., p. 60). Rodgers does not have responsibility to the team members to give them clear direction or assignments. This authority is not given to him. He is not given the authority to give direction or assignments. (Rodgers Dep., pp. 58-59).
891. Rodgers' management duties also include	The assistant manager manages the manpower in

vacation scheduling, time keeping and recording, keeping track of attendance and other such personnel duties for his group. (Rodgers Dep. Ex. 3, ¶ 13).	Rodgers' group. (Rodgers Dep., p. 26). The assistant manager and general manager responsible for tracking attendance and vacation scheduling in the group. (Rodgers Dep., p. 26, 28).
892. As GL, Rodgers updates attendance calendars on TMs. (Rodgers Dep., p. 27).	Undisputed.
893. As GL, Rodgers keeps up with vacation scheduling and makes sure the schedule meets the Company policy. (Rodgers Dep., p. 29).	The assistant manager manages the manpower in Rodgers' group. (Rodgers Dep., p. 26). The assistant manager and general manager responsible for tracking attendance in the group. (Rodgers Dep., p. 26).
894. Rodgers keeps track of whether a TM receives an occurrence under the attendance policy. (Rodgers Dep., p. 107).	Undisputed.
895. Rodgers uses judgment and discretion to resolve quality problems and decide what countermeasures should be implemented. (Rodgers Dep. Ex. 3, ¶ 14).	Team members develop countermeasures. (Rodgers Dep., p. 122). If there is an SPE or SQE problem, someone else will develop a countermeasure. (Rodgers Dep., pp. 63-64). If there is a quality problem, Rodgers fixes it and calls the necessary people to contain it. (Rodgers Dep., pp. 63-64). Rodgers is not ultimately responsible for quality that comes out of his group. (Rodgers Dep., p. 123). It is the team members' responsibility for quality defects if they install a part incorrectly. (Rodgers Dep., p. 33). It is management's responsibility to make sure it doesn't happen again. (Rodgers Dep., p. 65). Rodgers does not counsel the TM in this case; he would ask them what happened and after that he escalates it up to the manager. (Rodgers Dep., p. 34).
896. Rodgers makes sure that his TMs are following the SMPs. (Rodgers Dep., p. 66).	If a team member did not follow the SMP, it was management's responsibility to make sure it didn't happen again. It was not Rodgers responsibility. (Rodgers Dep., p. 65).
897. Rodgers is responsible for the performance of his group. (Rodgers Dep., p. 69).	Rodgers is not responsible for the operations of his group. (Rodgers Dep., p. 25). The team leader is responsible for the performance of his team. (Rodgers Dep., p. 69).
898. When Rodgers is notified of a quality defect, he	Undisputed.

will trace it back to the TM involved and try to correct it with that TM. (Rodgers Dep., pp. 113-14).	
899. Rodgers keeps a quality tracking sheet for each one of his TMs and he will learn of a quality defect from Quality, find out which TM is involved, talk with the TM, and document the defect on the sheet. (Rodgers Dep., pp. 116-17).	Undisputed.
900. If a TM has continuing quality defects, Rodgers will write up a CPR. (Rodgers Dep., p. 119).	Rodgers has never written a CPR. He has never looked at a CPR before. (Rodgers Dep., p. 120).
901. During the day, Rodgers observes the TMs in his group. (Rodgers Dep., p. 93).	Undisputed.
902. Rodgers observes his TMs to make sure they are following the SMPs. (Rodgers Dep., pp. 160-61).	If a team member did not follow the SMP, it was management's responsibility to make sure it didn't happen again. It was not Rodgers' responsibility. (Rodgers Dep., p. 65)).
903. Rodgers communicates with other GLs and AMs to coordinate production and to collaborate as to how to address production issues and improve production. (Rodgers Dep. Ex. 3, ¶ 18).	Undisputed.
904. Rodgers manages his group with infrequent instruction and direction by his AM or Manager unless there is a problem and he needs additional assistance. (Rodgers Dep. Ex. 3, ¶ 19).	Rodgers did not manage the group with infrequent instruction or direction. (Rodgers Dep., pp. 40-42). Rodgers' primary duty was not the supervision and management of his group, nor the managing the performance of his group. Rodgers does not have any subordinates, is not a manager, and is not a supervisor. (Rodgers Dep., pp. 56-57).
905. Rodgers supervises the TLs and TMs in his group. (Rodgers RFA #1).	Rodgers did not manage the group with infrequent instruction or direction. (Rodgers Dep., pp. 40-42). Rodgers' primary duty was not the supervision and management of his group, nor the managing the performance of his group. Rodgers does not have any subordinates, is not a manager, and is not a supervisor. (Rodgers Dep., pp. 56-57).
906. Rodgers gives work directions and assignments to members of his group. (Rodgers RFA #2).	Rodgers did not manage the group with infrequent instruction or direction. (Rodgers Dep., pp. 40-42). Rodgers' primary duty was not the supervision and management of his group, nor the managing the performance of his group. Rodgers does not

	have any subordinates, is not a manager, and is not a supervisor. (Rodgers Dep., pp. 56-57).
907. Rodgers manages attendance in his group and ensures that his group is properly staffed. (Rodgers RFA #3).	Rodgers does not manage manpower. He does not manage staffing or attendance. (Rodgers Dep., p. 26).
908. Rodgers manages vacation scheduling, time keeping and attendance tracking for the members of his group. (Rodgers RFA #4).	The assistant manager manages the manpower in Rodgers' group. (Rodgers Dep., p. 26).
909. Rodgers directs his group in meeting the Company's objectives for safety, product quality, accuracy, productivity, cost reduction, housekeeping, efficiency training and team harmony. (Rodgers RFA #5).	Rodgers is not ultimately responsible for quality that comes out of his group. (Rodgers Dep., p. 123). Rodgers does not give team members direction or assignments. This authority is not given to him. (Rodgers Dep., pp. 58-59).
910. Rodgers evaluates the performance of his TMs and TLs in his group, provides an opinion as to whether they are ready for promotion, and his opinion is one factor considered in promotion decisions. (Rodgers RFA ##6, 7, 8).	A member can be promoted even if Rodgers rates their performance as non-satisfactory. (Rodgers Dep., p. 129).
911. Rodgers prepares performance evaluations for TMs in his group. (Rodgers Dep., pp. 124-25).	Undisputed.
912. Rodgers evaluates how the TM measures up against the performance criteria and whether they are satisfactory or not satisfactory in each category. (Rodgers Dep., pp. 125-26).	Undisputed.
913. If Rodgers gives a TM or TL a not satisfactory rating in any area of the evaluation other than attendance, the TM or TL is not eligible for promotion. (Jones Decl. ¶ 33).	A member can be promoted even if Rodgers rates their performance as non-satisfactory. (Rodgers Dep., p. 129).
914. A TM must receive a satisfactory evaluation to be eligible for promotion. (Rodgers Dep., pp. 128-29).	A member can be promoted even if Rodgers rates their performance as non-satisfactory. (Rodgers Dep., p. 129).
915. Rodgers' opinion as to whether TMS and TLs in his group are ready for promotion is given consideration and normally is followed in determining if the TL or TM will be promoted. (Jones Decl. ¶¶ 31-32).	A member can be promoted even if Rodgers rates their performance as non-satisfactory. (Rodgers Dep., p. 129).
916. Rodgers counsels TMs and TLs on performance, quality of work and conduct when appropriate. (Rodgers RFA #9).	Undisputed.
917. Rodgers counsels his TMs on their performance	Undisputed.

and decides whether to use verbal counseling, documentation of a repetitive problem or a correction performance review. (Rodgers Dep. Ex. 3, ¶ 7).	
918. Rodgers has authority to initiate a corrective performance review when he deems necessary. (Rodgers RFA #10).	Rodgers has never written a CPR. He has never looked at a CPR before. (Rodgers Dep., p. 120).
919. Rodgers is responsible for the operation of his group at all times while on duty. (Rodgers RFA #11).	Rodgers does not manage his line or group as an operational unit. (Rodgers Dep., p. 25). The team leader is responsible for the performance of his team. (Rodgers Dep., p. 69).
920. Rodgers initiates, facilitate and monitors problem solving in his group. (Rodgers RFA #12).	Problem solving is the job duty of every team member in the plant. (Rodgers Dep., p. 21).
921. Rodgers ensures that Company policies and work rules are enforced in his group. (Rodgers RFA #14).	Rodgers monitors the company policies. (Rodgers Dep., pp. 190-91).
922. Rodgers ensures the development of TMs in his group through performance evaluations, training, feedback and coaching. (Rodgers RFA #15).	(Rodgers cannot give directions or assignments to help group members in the development of their roles. (Rodgers Dep., p. 56)
923. Rodgers will make notes about ways a TM can further develop their skills. (Rodgers Dep., p. 126).	Undisputed.
924. As GL, Rodgers reviews the training plan to make sure it is correct. (Rodgers Dep., pp. 29-30).	Undisputed.
925. As GL, Rodgers makes sure enough TLs are trained in enough stations in his group so that all of the stations can be covered. (Rodgers Dep., p. 30).	Rodgers has never directed that certain team members be retrained processes. (Rodgers Dep., pp. 29-30).
926. Rodgers initiates continuous improvement activities in his group and leads the implementation of initiatives in his group. (Rodgers RFA #16).	Undisputed.
927. Rodgers ensures that his group works safely and monitors the environment for safety hazards. (Rodgers RFA #17).	Undisputed.
928. As GL, Rodgers makes sure that TMs with restrictions work within those restrictions. (Rodgers Dep., pp. 105-06).	Undisputed.
929. When there is an injury in Rodgers' group, he completes an MPS sheet, finds out what was the root cause of the injury and develops a countermeasure along with Safety and other management personnel. (Rodgers Dep., pp. 77-78).	Undisputed.
930. Rodgers handles employee issues and conflicts in his group and decides when to involve higher	Undisputed.

management or MBUSI Team Relations Department. (Rodgers RFA #18).	
931. Rodgers can direct training and retraining in skills for TMs in his group and does so if he deems appropriate. (Rodgers RFA #19).	Team leaders are responsible for making sure that the team members are trained. (Rodgers Dep., p. 29). He never directs that certain team members be retrained. (Rodgers Dep., p. 30).
932. Rodgers is responsible for keeping his group enthusiastic, motivated and focused. (Rodgers RFA #20).	Undisputed.
933. Rodgers takes steps to be sure that his group meets its production goals. (Rodgers RFA #22).	Undisputed.
934. Rodgers uses his best judgment in performing all of his duties as GL. (Rodgers RFA #23).	Undisputed.
935. Rodgers fulfills all the roles and responsibilities of his position as GL at MBUSI. (Rodgers RFA #24).	<p>Rodgers' primary duty was not the supervision and management of his group, nor the managing the performance of his group. He did not assign special duties, and did not manage the group with infrequent instruction or direction. (Rodgers Dep., pp. 40-42).</p> <p>Rodgers does not have any subordinates, is not a manager, and is not a supervisor. (Rodgers Dep., pp. 56-57).</p> <p>Rodgers spends his day answering line calls, doing repairs, updating the calendar, holding morning meetings, and working the line. (Rodgers Dep., p. 62).</p> <p>Rodgers does not manage manpower, materials, machinery or methods. He did not manage staffing or attendance. (Rodgers Dep., p. 26).</p> <p>Rodgers does not make any calls at the plant. He escalates them to the management team. (Rodgers Dep., p. 57). Mr. Gilliam makes all of the decisions for Rodgers' group. (Rodgers Dep., p. 60).</p> <p>Rodgers does not have responsibility to the team members to give them clear direction or assignments. This authority is not given to him. He is not given the authority to give direction or assignments. (Rodgers Dep., pp. 58-59).</p> <p>Rodgers did not manage the line. Mr. Gilliam manages the line. (Rodgers Dep., pp. 61-62).</p> <p>Rodgers told his assistant manager that he was not managing or supervising. (Rodgers Dep., p. 62).</p>

	The assistant manager manages the manpower in Rodgers' group. (Rodgers Dep., p. 26). Team leaders are responsible for making sure that the team members are trained. (Rodgers Dep., p. 29). He never directs that certain team members be retrained. (Rodgers Dep., p. 30).
936. As GL, Rodgers is the leader of his group and uses leadership skills in his job. (Rodgers RFA #25).	Undisputed.
937. Rodgers leads his group in meeting Company standards. (Rodgers RFA #26).	Undisputed.
938. Rodgers checks the plantwide call-in number. (Rodgers Dep., p. 28).	Undisputed.
939. At the start of the shift, Rodgers goes to a GLs' meeting with the Managers and AMs and they go over the issues from the prior day, the issues they expect to face during the day and how those should be handled. (Rodgers Dep., pp. 89-90).	Undisputed.
940. Rodgers then goes back to the Team Center, leads a meeting with the TMs in his group and passes on that information. (Rodgers Dep., pp. 27-28, 91).	Undisputed.
941. Rodgers will attend lunch box meetings for GLs where they will discuss Company policies. (Rodgers Dep., pp. 97-98).	Undisputed.
942. Rodgers is not normally assigned to work a station as GL. (Rodgers Dep., p. 75).	Undisputed.
943. Rodgers has never requested authorization for overtime and been denied such paid. (Rodgers RFA #42).	Rodgers requested overtime pay and did receive some overtime pay, but some he did not. (Rodgers Dep., p. 52).
944. Since Mr. Taylor left MBUSI, Rodgers has been paid for any overtime that he worked. (Rodgers Dep., p. 54).	Undisputed.
945. Rodgers agrees with his 2009 performance evaluation which states in part: "[Rodgers] has been able to adapt and manage a highly demanding area with little or no supervision." (Rodgers Dep., p. 55; Rodgers Dep. Ex. 7).	Undisputed.

L. TIMOTHY SWINDLE	
946. Timothy Swindle ("Swindle") <u>admitted in Response to a Request for Admission that he was</u>	Undisputed.

<u>properly classified under the FLSA as an exempt employee.</u> (Swindle RFA #43). ²⁵	
947. Swindle began employment at MBUSI as a TM in Assembly on the Final Line in July, 1997. (Swindle Dep., pp. 12, 21). ²⁶	Undisputed.
948. Swindle was a TM in Assembly on the Final Line for two years. (Swindle Dep., p. 24).	Undisputed.
949. Swindle was promoted to a TL position on the Final Line. and he received a pay raise when he became a TL. (Swindle Dep., pp. 27-28).	Undisputed.
950. Swindle was next TL on the Project Team for approximately four years. (Swindle Dep., p. 36).	Undisputed.
951. Swindle was promoted to GL on the Final 2 Line in Plant 2 in March, 2004. (Swindle Dep., pp. 41-42, 53).	Undisputed.
952. As GL for the Final 2 Line, Swindle had four or five teams in his group, four or five TLs and twenty to twenty-five TMs. (Swindle Dep., p. 55).	Undisputed.
953. After about a year and a half as GL over the Final 2 Line, Swindle moved to GL over the Final 3 Line for approximately a year. (Swindle Dep., p. 53).	Undisputed.
954. Swindle was moved from the Final 2 Line to the Final 3 Line in 2005 due to his organizational and problem solving skills and immediately showed positive results. (Swindle Dep., p. 130; Swindle Dep. Ex. 6).	Undisputed.
955. As GL over Final 3 Line, Swindle had four or five teams, four or five TLs and twenty-six to thirty TMs in his group. (Swindle Dep., p. 58).	Undisputed.
956. Swindle next was GL over the Door Line for about six months and his group had seven or eight teams, seven or eight TLs and forty to fifty TMs. (Swindle Dep., pp. 53, 62).	Undisputed.
957. Swindle then was GL for Engine 1 Line, Plant 1 and his group had four to five teams, four to five TLs and fifteen to twenty-five TMs. (Swindle Dep.,	Undisputed.

²⁵ Swindle Responses to Requests for Admission are attached as Ex. 192 to MBUSI's Evidentiary Submission (Volume 15).

²⁶ The Deposition of Timothy Swindle and exhibits to the deposition are attached as Ex. 193 to MBUSI's Evidentiary Submission (Volume 15).

pp. 54-55, 64).	
958. Swindle next was GL on the Final 1 Line for Plant 1 for approximately six months before he resigned his employment with MBUSI in January, 2008. (Swindle Dep., pp. 15, 54).	Undisputed.
959. As GL for Final 1 Line, Plant 1, Swindle's group had four to five teams, four to five TLs and twenty-five to thirty TMs. (Swindle Dep., p. 66).	Undisputed.
960. Swindle attended Group Leader Academy which lasted one or two weeks and he participated in the Group Leader Self Sufficiency Program. (Swindle Dep., pp. 46-48).	Undisputed.
961. As a GL at MBUSI, Swindle earned at least \$455.00 per week in salary. (Swindle RFA #41).	Undisputed.
962. Swindle supervised the TLs and TMs in his group. (Swindle RFA #1).	Undisputed.
963. As GL, Swindle managed his group and complied with the roles and responsibilities set out on the Roles and Responsibilities Card except that he did not complete an annual plan. (Swindle Dep., pp. 121-23).	Undisputed.
964. As GL, Swindle performed the duties set out on the essential functions of the GL's job description. (Swindle Dep., p. 126; Swindle Dep. Ex. 4).	Undisputed.
965. Swindle admitted to spending more of his time at work supervising and managing his group than performing any other duties. (Swindle RFA #39).	Swindle spent most of his time observing TMs and checking quality. (Swindle Dep., p. 83). He spent approximately 5 to 6 hours of an eight hour shift checking quality on the line. (Swindle Dep., p. 84). Swindle would be contacted 20 to 50 times a day about problems on the line. He spent anywhere from 1 minute to many hours to resolve each problem. Swindle was not responsible for the SQDCM goals of his group. (Swindle Dep., pp. 89-90).
966. Swindle's duties and responsibilities as a GL were different than those he had as a TM and TL. (Swindle Dep., p. 49).	Undisputed.
967. As GL, Swindle would try to make sure his TMs were working as efficiently as possible. (Swindle Dep., pp. 110-11).	Undisputed.
968. As GL, Swindle directed and tried to lead his group to achieve their SQDCM goals. (Swindle Dep., p. 79; Swindle RFA #5).	Swindle was not responsible for the SQDCM goals of his group. (Swindle Dep., p. 79).
969. Swindle directed his group in meeting the	Swindle was not responsible for the SQDCM

Company's objectives for safety, product quality, accuracy, productivity, cost reduction, housekeeping, efficiency, training and team harmony. (Swindle RFA #5).	goals of his group. (Swindle Dep., p. 79).
970. As GL, Swindle would respond to issues or problems that arose on the Line. (Swindle Dep., p. 86).	Undisputed.
971. Swindle would attempt to solve problems within his group before going outside the group for help. (Swindle Dep., pp. 88-89).	Undisputed.
972. As GL, if Swindle could not solve a problem himself within his own group, he would seek the assistance of his AM. (Swindle Dep., p. 89).	Undisputed.
973. Swindle led his group in meeting company standards; he led change in his group; and he used leadership skills in his GL position. (Swindle RFA ##25, 26 & 28).	Undisputed.
974. A Manager or AM was not always present in Swindle's group, and he led his group independently of his Manager or AM. (Swindle RFA #33).	Undisputed.
975. Swindle took control of situations in his area that arose when his AM was absent. (Swindle RFA #32).	Undisputed.
976. Swindle gave work directions and assignments to the members of his group. (Swindle RFA #2).	Undisputed.
977. Swindle made decisions about his group and carried out his plans for the group. (Swindle RFA # 35).	Undisputed.
978. Swindle shared his knowledge and experience with his group. (Swindle RFA #30).	Undisputed.
979. Swindle's duties differed from those performed by the TMs in his group. (Swindle RFA #34).	Undisputed.
980. Swindle ensured that company policies and work rules were enforced in his group. (Swindle RFA #14).	Undisputed.
981. Swindle handled TM issues and conflicts in his group and decided when to involve higher management or Team Relations in an employee issue or conflict. (Swindle RFA #18).	Swindle had no employee issues or conflicts within his group. (Swindle Dep., 119).
982. Swindle counseled TMs on performance, quality of work and conduct. (Swindle RFA #9).	Undisputed.
983. Swindle had the authority to initiate a CPR on a TM when he deemed necessary. (Swindle RFA #10).	Undisputed.

984. Swindle managed attendance in his group and ensured that his group was properly staffed. (Swindle RFA #3).	Undisputed.
985. Swindle managed vacation scheduling, timekeeping and attendance tracking for the members of his group. (Swindle RFA #4).	Undisputed.
986. As GL, Swindle tracked attendance for his TMs on a daily basis, determined if the absence was excused and initiated a CRP if it was necessary. (Swindle Dep., pp. 101-03).	Undisputed.
987. As GL, Swindle could approve vacation and emergency vacation requests for his TMs. (Swindle Dep., p. 103).	Undisputed.
988. As GL, Swindle could adjust manpower within his own group. (Swindle Dep., p. 105).	Undisputed.
989. Swindle evaluated the performance of TMs and TLs in his group. (Swindle RFA #6).	Swindle gave input on evaluations. (Swindle Dep., p. 33).
990. As GL, Swindle prepared performance evaluations for his TMs and TLs on an annual basis. (Swindle Dep., p. 111).	Undisputed.
991. Swindle would rate his TMs and TLs as satisfactory or not satisfactory based on the performance criteria, list development skills, and state whether they needed development or were ready for the next level. (Swindle Dep., pp. 111-15).	Undisputed.
992. If Swindle gave a TM or TL a not satisfactory rating in any area of the evaluation other than attendance, the TM or TL was not eligible for promotion. (Jones Decl. ¶ 33).	Undisputed.
993. Swindle provided his opinion as to whether TMs and TLs in his group were ready for promotion and Swindle's opinion was given consideration and normally was followed in determining if the TL or TM was promoted. (Swindle RFA #7; Jones Decl. ¶¶ 31-32).	Undisputed.
994. Swindle initiated, facilitated and monitored problem solving in his group. (Swindle RFA #12).	Undisputed.
995. Swindle ensured that production and quality goals were met in his group. (Swindle RFA ##13 & 22).	Undisputed.
996. If Swindle observed a TM incorrectly performing his job, he would correct them. (Swindle Dep., p. 83).	Undisputed.
997. If there was a quality issue from his Line,	Swindle would also correct a team member if

Swindle would work to determine the root cause of the issue, determine a countermeasure and make sure the countermeasure was followed. (Swindle Dep., pp. 98-99).	they were not complying with the countermeasure as a TM and a TL. (Swindle Dep., p. 97).
998. As GL, when Swindle was checking quality, he maintained his other responsibilities. (Swindle Dep., p. 90).	Undisputed.
999. Swindle initiated continuous improvement activities in his group and led the implementation of initiatives in his group. (Swindle RFA #16).	Undisputed.
1000. Swindle ensured that his group was working safely and he monitored the environment for safety hazards. (Swindle RFA #17).	Undisputed.
1001. As GL, Swindle would work to ensure that his TMs complied with safety policies, corrected them if he noticed them not complying with safety standards and if there was a continual problem, he would initiate a CPR. (Swindle Dep., pp. 92-93).	Undisputed.
1002. As GL, if there was an accident, Swindle would work to develop a countermeasure and make sure the countermeasure was followed by his TMs. (Swindle Dep., p. 96).	Swindle would also correct a team member if they were not complying with the countermeasure as a TM and a TL. (Swindle Dep., p. 97).
1003. As GL, in the event of severe weather incentive or evaluation situation, Swindle was required to make sure his TMs were where they were supposed to be and take a head count. (Swindle Dep., p. 51).	Undisputed.
1004. Swindle directed training and retraining in skills for TMs in his group, and he did so if he deemed appropriate. (Swindle RFA #19).	Swindle did not oversee training of team members. (Swindle Dep., p. 99). Developmental training was handled by HR or someone else. (Swindle Dep., p. 100).
1005. As GL, Swindle would make sure that his TMs got the process training they needed to do their job. (Swindle Dep., p. 100).	Undisputed.
1006. As GL, Swindle would sign off on the Circle of Skills documents for his TMs and make sure they were capable of operating at the level indicated. (Swindle Dep., p. 101).	Undisputed.
1007. As GL, Swindle developed training plans for his TMs and could send them back to have more training if necessary. (Swindle Dep., p. 101).	Undisputed.
1008. Swindle showed and supported top performance in his group. (Swindle RFA #29).	Undisputed.
1009. Swindle used his best judgment in performing	Undisputed.

all of his GL job duties. (Swindle RFA #23).	
1010. Swindle fulfilled all of the roles and responsibilities of his GL position. (Swindle RFA #24).	Undisputed.
1011. Before his shift started, Swindle would review the shift log for any issues that he would face, check emails, check call-ins to see if anyone had called in, update his attendance calendar, check the Line for proper stocking of parts, and do a safety walk through. (Swindle Dep., pp. 73, 75-76).	Undisputed.
1012. As GL, Swindle would daily update the SQDCM Board which was a visual aide to TMs so they could see what were the issues. (Swindle Dep., pp. 74-75).	Undisputed.
1013. As GL, Swindle had a meeting which would normally last fifteen to thirty minutes before his shift started where he was given information to pass along to his group in the morning meeting. (Swindle Dep., pp. 68, 70).	Undisputed.
1014. Swindle would then have a meeting with his group that he conducted in which he would convey information such as production numbers, quality numbers and safety numbers. (Swindle Dep., pp. 70-71).	Undisputed.
1015. As GL, Swindle attended lunch box meetings with HR where HR related subjects were covered. (Swindle Dep., pp. 51, 69).	Undisputed.
1016. During the course of his days as GL, Swindle would walk through his group and observes his TMs' job performance. (Swindle Dep., p. 82).	Undisputed.
1017. After his shift, Swindle would prepare a shift log. (Swindle Dep., p. 77).	Undisputed.
M. JASSEN TIDWELL	
1018. Jassen Tidwell ("Tidwell") began employment at MBUSI on March 4, 1996 as a TM in the Paint Repair Group in Plant 1. (Tidwell Dep., pp. 17-19). ²⁷	Undisputed.
1019. Tidwell was promoted to TL in Paint Repair in 1998 and received a raise. (Tidwell Dep., pp. 20, 33).	Undisputed.

²⁷ The Deposition of Jassen Tidwell and exhibits to the deposition are attached as Ex. 194 to MBUSI's Evidentiary Submission (Volume 15).

1020. Tidwell was promoted to GL in Paint on March 13, 2006. (Tidwell Dep., pp. 47-48).	Undisputed.
1021. Tidwell went through Group Leader Academy and received training about communication, HR policies, leadership, and problem solving. (Tidwell Dep., pp. 49, 51-52).	Undisputed.
1022. When Tidwell became GL, he had the Top Coat area which included Top Coat, Polish and Repair areas. (Tidwell Dep., pp. 62-63).	Undisputed.
1023. In Tidwell's group, Paint Repair TMs were off line and Top Coat and Polish TMs were on line. (Tidwell Dep., p. 63).	Undisputed.
1024. In Tidwell's group, the Top Coat Line included four TMs, including two TLs, the Polish Line included six TMs, including one TL, and Paint Repair had four TMs and a TL. (Tidwell Dep., pp. 62-64).	Undisputed.
1025. Tidwell's group covered an area at least two football fields in size. (Tidwell Dep., p. 65).	Undisputed.
1026. Tidwell was demoted to TM in Assembly on March 14, 2008. (Tidwell Dep., p. 148).	Undisputed.
1027. Tidwell took a voluntary buy-out and left MBUSI around December 16, 2008. (Tidwell Dep., pp. 12, 148-49).	Undisputed.
1028. As a GL at MBUSI, Tidwell earned at least \$455.00 per week in salary. (Tidwell RFA #41). ²⁸	Undisputed.
1029. Tidwell supervised the TLs and TMs in his group. (Tidwell RFA #1).	It is not Tidwell's responsibility to make a TM follow the rules. Tidwell is the messenger. He relays things to upper management. (Tidwell Dep., pp. 146-147).
1030. A Manager or AM was not always present in his group, and Tidwell led his group independently of his Manager or AM. (Tidwell RFA #33).	Undisputed.
1031. Tidwell gave work directions and assignments to the members of his group. (Tidwell RFA #2).	Undisputed.
1032. Tidwell directed his group in meeting the company's objectives for safety, product quality, accuracy, productivity, cost reduction, housekeeping, efficiency, training and team harmony. (Tidwell RFA #5).	Undisputed.

²⁸ Tidwell Responses to Requests for Admission are attached as Ex. 195 to MBUSI's Evidentiary Submission (Volume 15).

1033. Tidwell led his group in meeting company standards; he led change in his group; and he used leadership skills in his GL position. (Tidwell RFA ##25, 26 & 28).	Undisputed.
1034. Tidwell shared his knowledge and experience with his group. (Tidwell RFA #30).	Undisputed.
1035. Tidwell initiated continuous improvement activities in his group and led the implementation of initiatives in his group. (Tidwell RFA #16).	The GL cannot initiate continuous improvement because they cannot do it themselves. Engineers and others must be involved. (Tidwell Dep., p. 157-158). The AM made all of the final decisions. (Tidwell Dep., p. 154).
1036. Tidwell initiated, facilitated and monitored problem solving in his group. (Tidwell RFA #12).	The GL cannot initiate or facilitate problem solving. They can present their ideas but there is nothing they can actually implement. (Tidwell Dep., p. 158).
1037. Tidwell showed and supported top performance in his group. (Tidwell RFA #29).	Undisputed.
1038. Tidwell used his best judgment in performing all of his GL job duties. (Tidwell RFA #23).	Undisputed.
1039. Tidwell fulfilled all of the roles and responsibilities of his GL position. (Tidwell RFA #24).	The GL cannot do anything on the roles and responsibilities card by themselves. (Tidwell Dep., pp. 157-158). The GL cannot initiate or facilitate problem solving. They can present their ideas but there is nothing they can actually implement. (Tidwell Dep., p. 158). The GL cannot initiate continuous improvement because they cannot do it themselves. Engineers and others must be involved. The GL does not manage machinery or materials. (Tidwell Dep., p. 157-158).
1040. Tidwell's primary duties as a GL in Paint Repair were meeting production targets, safety and quality. (Tidwell Dep., p. 54).	As a TL, and TM, Tidwell's primary duties were production, safety, and quality. (Tidwell Dep., pp. 26, 33-34).
1041. Tidwell's primary duties as a GL to meet production targets were to review the processes and spot check the TMs to make sure they were following the SMPs. (Tidwell Dep., p. 85).	Undisputed.
1042. As GL, to meet production targets, Tidwell would review the processes, watch the spot check at the end of the Line, and make sure the TMs were following the SMPs. (Tidwell Dep., p. 54).	Undisputed.
1043. As GL, Tidwell would move around to watch his different TMs. (Tidwell Dep., p. 65).	Undisputed.
1044. If a TM was not following a SMP, Tidwell	Undisputed.

would talk with them and if there were reoccurrences, he would escalate it to the AM's attention. (Tidwell Dep., pp. 57-58).	
1045. As GL, Tidwell encouraged his TMs to do the best job they could do. (Tidwell Dep., p. 60).	Undisputed.
1046. As GL, Tidwell would let his TMs know if they were doing a good job. (Tidwell Dep., pp. 60-61).	Undisputed.
1047. Another primary duty Tidwell had was safety. (Tidwell Dep., pp. 85-86).	Safety was everybody's responsibility. (Tidwell Dep., p. 86).
1048. Tidwell ensured that his group was working safely and he monitored the environment for safety hazards. (Tidwell RFA #17).	If Tidwell noticed that someone was wearing their PPE, he would do the same thing as any TL. He would bring it to their attention. (Tidwell Dep., pp. 86-87).
1049. With respect to safety, Tidwell would discuss safety in the morning meetings, notify TMs of any safety instances and bring safety issues to their attention. (Tidwell Dep., p. 86).	Undisputed.
1050. When Tidwell observed his group, he would make sure they were working safely and wearing the appropriate PPE. (Tidwell Dep., p. 86).	Tidwell would bring safety issues to everybody's attention. Tidwell observed to see that people were wearing their PPE. (Tidwell Dep., p. 86-87).
1051. If a TM or TL brought a safety issue to his attention, Tidwell would view it and then determine what needed to be done. (Tidwell Dep., p. 97).	If a TM or TL brought a safety issue to his attention, and it was something mechanical, he would take it to Engineering. If the SMP was not designed right, he would bring it to the attention of Engineering and his AM. (Tidwell dep., pp. 97-98).
1052. As GL, Tidwell would do a daily safety check. (Tidwell Dep., p. 98).	Undisputed.
1053. As GL, one of Tidwell's primary duties was quality and he would watch his TMs and make sure they were following the SMPs to ensure quality. (Tidwell Dep., pp. 99-100).	Undisputed.
1054. Tidwell ensured that production and quality goals were met in his group. (Tidwell RFA ##13 & 22).	As a TM, Tidwell's primary duty was to meet production goals and quality and safety. (Tidwell Dep., p. 20).
1055. If there were quality issues, Tidwell would do verbal counseling, but if there were reoccurring problems for which further correction was needed, he would escalate it to his AM. (Tidwell Dep., p. 100).	The AM verbally counsels the TM. If there was any kind of correction, it would always be addressed by the AM. (Tidwell Dep., p. 100).
1056. With respect to his duties regarding quality, Tidwell would observe his TMs and if they were not	Undisputed.

having good quality he would talk with them on the Line, and then sometimes he and the AM would have "sit-downs" with them and if necessary give them a CPR. (Tidwell Dep., p. 109).	
1057. Additionally, as GL, Tidwell would do spot checks to make sure his TMs were not having quality issues. (Tidwell Dep., p. 110).	Undisputed.
1058. As GL, Tidwell presented continuous improvement ideas, but he could not do it by himself. (Tidwell Dep., pp. 157-58).	Undisputed.
1059. As GL, Tidwell could present his ideas about problem solving, but he had to work with others to make it happen. (Tidwell Dep., pp. 158-59).	Undisputed.
1060. As GL, Tidwell would have ideas for improvement in his group and bring them to the attention of the AM and Engineering. (Tidwell Dep., pp. 111-12).	Undisputed.
1061. If an SMP was changed, Tidwell would notify the TMs in a morning meeting and then he, the Engineer and the TLs would work with the TMs until they were comfortable with the change. (Tidwell Dep., p. 84).	Undisputed.
1062. As GL, Tidwell would complete turnover logs. (Tidwell Dep., p. 114).	Undisputed.
1063. As GL, Tidwell would review the prior shift's turnover log and inform his group in the morning meeting of any issues. (Tidwell Dep., pp. 115-16).	Undisputed.
1064. Tidwell could direct training and retraining in skills for TMs in his group, and he did so if he deemed appropriate. (Tidwell RFA #19).	The AM would be the one to assign training. (Tidwell Dep., p. 59).
1065. Tidwell evaluated the performance of TMs and TLs in his group. (Tidwell RFA #6).	Undisputed.
1066. When filling out a performance evaluation for a TM, Tidwell would put his comments on the form, review it with his AM, and then they would decide together on the rating of satisfactory and not satisfactory. (Tidwell Dep., pp. 119-20).	The AM tells Tidwell whether a TM should be rated satisfactory or not satisfactory. (Tidwell Dep., pp. 119-120).
1067. If Tidwell gave a TM or TL a not satisfactory rating in any area of the evaluation other than attendance, the TM or TL was not eligible for promotion. (Jones Decl. ¶ 33).	Undisputed.
1068. Tidwell would also include comments on the form regarding development steps the TM could take. (Tidwell Dep., p. 120).	Undisputed.

1069. Tidwell provided his opinion as to whether or not TMs and TLs in his group were ready for promotion. (Tidwell RFA #7).	Undisputed.
1070. On the evaluation form Tidwell would mark whether a TM was ready for the next level and include his comments. (Tidwell Dep., pp. 121-22).	Undisputed.
1071. Tidwell's recommendation as to whether a TL or TM was ready for promotion was given consideration and normally was followed in determining if the TL or TM was promoted. (Jones Decl. ¶¶ 31-32).	Tidwell's comment as to whether a TL or TM was ready for promotion was one of the things that would be looked at in determining if he would be promoted. (Tidwell Dep., pp. 121-122).
1072. Tidwell managed attendance in his group and ensured that his group was properly staffed. (Tidwell RFA #3).	Tidwell tracked attendance on the board so that the AM could come by and see what the manpower was like in the group. (Tidwell Dep., pp. 74-75).
1073. Tidwell managed vacation scheduling, timekeeping and attendance tracking for the members of his group. (Tidwell RFA #4).	A GL cannot approve a TM to be out. The AM must approve it. (Tidwell Dep. p. 126).
1074. As GL, Tidwell would keep an attendance calendar for each TM. (Tidwell Dep., p. 103).	Undisputed.
1075. On the attendance calendar, Tidwell would keep up with whether the absence was excused or unexcused and the number of occurrences. (Tidwell Dep., pp. 103-04).	Undisputed.
1076. On attendance issues, Tidwell would have HR do a spot check on the gate records to make sure that the TM had not been present on the dates he had them marked out with occurrences, he would get with his AM and then they would issue a CPR to the TM. (Tidwell Dep., pp. 106-08).	HR would do a CPR if a TM had too many occurrences. Tidwell would not personally talk to the TM about having poor attendance. The questions came from HR, the AM, and Tidwell. (Tidwell Dep., p. 108).
1077. Tidwell ensured that company policies and work rules were enforced in his group. (Tidwell RFA #14).	It is not Tidwell's responsibility to make a TM follow the rules. Tidwell is the messenger. He relays things to upper management. (Tidwell Dep., pp. 146-147).
1078. Tidwell handled TM issues and conflicts in his group and decided when to involve higher management or Team Relations in an employee issue or conflict. (Tidwell RFA #18).	Undisputed.
1079. Tidwell counseled TMs on performance, quality of work and conduct. (Tidwell RFA #9).	When Tidwell was a TM, if the line was running below target, he was counseled by the AM. The GL would not counsel him when he was a TM. (Tidwell Dep., pp. 23-25).
1080. Tidwell also had the authority to initiate a CPR on a TM when he deemed necessary. (Tidwell	HR would do a CPR if a TM had too many occurrences. Tidwell would not personally talk

RFA #10).	to the TM about having poor attendance. The questions came from HR, the AM, and Tidwell. (Tidwell Dep., p. 108).
1081. Eighty percent of the TMs in Tidwell's group received CPRs that were based on input from him. (Tidwell Dep., p. 145).	Tidwell has input on a CPR and the AM would do the evaluating. (Tidwell Dep., p. 145).
1082. As GL, probably about three out of five days a week, there would be an occasion when Tidwell would have to take on the responsibility of a TL due to manpower issues. (Tidwell Dep., p. 68).	Undisputed.
1083. Once a week, Tidwell might have had to actually work a station for a rotation or up to half a day. (Tidwell Dep., p. 71).	Undisputed.
1084. This would usually be an emergency situation. (Tidwell Dep., p. 71).	Undisputed.
1085. Even when Tidwell would have to fill in for a TM or for a TL, he would maintain his GL duties. (Tidwell Dep., p. 172).	Undisputed.
	Tidwell was supposed to be paid time and half for overtime but it did not work out that way. In order to get paid for it, it would have to be line overtime. Most the time he did not get paid for overtime. If the line shut down at three o'clock, and it took him until six o'clock to prepare reports, end of shift logs, countermeasures and other paperwork he would not be paid for that time. For example, if he had 10 hours of overtime he might be paid for two hours. About every day, the line would run and he would not be paid for that overtime. He had to stay until the production goal was met because they wanted a GL to stay while TMs were working. (Tidwell Dep., pp. 166-170).

III. ARGUMENT

Mercedes bears a heavy burden of demonstrating that no genuine dispute exists as to any material fact in this case. The reason is twofold.

First, the party moving for summary judgment—i.e., Mercedes—always bears the burden of demonstrating the absence of a material dispute of fact and the Court must view all evidence and resolve all doubts about the facts in favor of the non-moving party—i.e., Plaintiffs. See Fed. R. Civ. P. 56(c); Kohlheim v. Glynn County, 915 F.2d 1473, 1476 (11th Cir. 1990) (“In evaluating a summary judgment motion, the burden of establishing the absence of a material dispute of fact is borne by the moving party; the reviewing court must view all evidence in the light most favorable to the non-movant and resolve all reasonable doubts about the facts in favor of the non-movant.”); Morrison v. Washington County, Alabama, 700 F.2d 678, 682 (11th Cir. 1983) (“Summary judgment should only be entered when the moving party has sustained its burden of showing the absence of a genuine issue as to any material fact when all evidence is viewed in the light most favorable to the non-moving party.”). All reasonable doubts about the facts must be resolved in favor of the non-moving party. See Mercantile Bank & Trust Co. v. Fidelity & Deposit Co., 750 F.2d 838, 841 (11th Cir. 1985). And, “[w]hen more than one inference reasonably can be drawn, it is for the trier of fact to determine the proper one.” Carlin Communication, Inc. v. Southern Bell Telephone and Telegraph Co., 802 F.2d 1352, 1356 (11th Cir. 1986) (citation omitted).

Second, “the application of an exemption under the Fair Labor Standards Act [“FLSA”] is a matter of affirmative defense on which the employer has the burden of proof.” Corning Glass Works v. Brennan, 417 U.S. 188, 196-197 (U.S. 1974). The employer “bears the burden of proving the applicability of a FLSA exception *by clear and affirmative evidence.*” Klinedinst v. Swift Invs., Inc., 260 F.3d 1251, 1254 (11th Cir. 2001) (quotation marks omitted) (emphasis

added). The employer must meet this stringent “clear and affirmative evidence” standard under a similarly stringent constraint that the FLSA exemptions are to be narrowly construed against the employer. Alvarez Perez v. Sanford-Orlando Kennel Club, Inc., 515 F.3d 1150, 1157 (11th Cir. 2008).

Here, the exemption to be narrowly construed is the so-called “executive exemption.” See 29 U.S.C.S. § 213(a)(1) (exempting “any employee employed in a bona fide executive. . .”). The FLSA does not define a “bone fide executive,” but allows the Secretary of Labor to establish regulations to clarify this issue.²⁹

There are two sets of regulations applicable to defining the executive exemption in this case: the bona fide executive regulation and the “working foreman” regulation. In August 2004, the Secretary of Labor revised its white collar exemption regulations, stating that it was not changing the substance or intent of these regulations at all, but merely clarifying them.³⁰ The new regulations provide that in order to meet the “executive exemption,” the employer must satisfy each of the following requirements:

²⁹ Regulations of the Secretary of Labor promulgated pursuant to an express delegation of legislative authority are to be given controlling weight unless found to be arbitrary, capricious, or contrary to the statute. See Chevron, U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837, 843-44 (1984). Although agency opinion letters “do not warrant Chevron-style deference,” they are “entitled to respect under . . . Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944), but only to the extent that those interpretations have the power to persuade.” Christensen v. Harris County, 529 U.S. 576, 587 (2000).

³⁰ As stated in Heffelfinger v. Elec. Data Sys. Corp., “the amendments were not meant to effect any substantive change in the exemptions.” 580 F. Supp. 2d 933, 950 (C.D. Cal. 2008); see also IntraComm, Inc. v. Bajaj, 492 F.3d 285, 295 n. 7 (4th Cir. 2007) (“This interpretation is strengthened by the fact that the preamble to the proposed amended regulations state that the changes were made ‘to simplify and update the current regulations’ [quoting 58 Fed. Reg. 15,560, 15,573 (Mar. 31, 2003)], not to effect a major alteration in how exemptions are construed.”).

- (1) Compensated on a salary basis at a rate of not less than \$455 per week . . . exclusive of board, lodging or other facilities;
- (2) Whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;
- (3) Who customarily or regularly directs the work of two or more other employees; *and*
- (4) Who has the authority to hire or fire other employees, or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.³¹

29 C.F.R. § 541.100(a) (emphasis added). The employer **must meet every one of the four parts** to this regulation if its claim for exemption is to prevail.

The “working foreman” concept is also useful because it helps to distinguish between a manager of a recognized subdivision and a mere strawboss or team lead of subordinate employees. Shockley v. City of Newport News, 997 F.2d 18 (4th Cir. 1993). Indeed, the old “working foreman” regulations even includes the term “Group Leaders” as an example of a class of non-exempt working foreman. See 29 C.F.R. § 541.115 (1992). Specifically, the former regulation provided:

One type of working foreman or working supervisor most commonly found in industry works alongside his subordinates. Such employees, sometimes known as strawbosses, or gang or *group leaders* perform the same kind of work as that performed by their subordinates, and also carry on supervisory functions. Clearly, *the work of the same nature as that performed by the employees’ subordinates must be counted as nonexempt work and if the amount of such work performed is substantial the exemption does not apply.* (“Substantial,” as used in this section, means more than 20 percent. See discussion of the 20-percent limitation on non-exempt work in § 541.112.) A foreman in a dress shop, for example, who operates a sewing machine to produce the product is performing clearly non-

³¹The new regulations say at 29 CFR 541.100(b) that “The phrase “salary basis” is defined at § 541.602; “board, lodging or other facilities” is defined at § 541.606; “primary duty” is defined at § 541.700; and “customarily and regularly” is defined at § 541.701.

exempt work. However, this should not be confused with the operation of a sewing machine by a foreman to instruct his subordinates in the making of a new product, such as a garment, before it goes into production.³²

Id. (emphasis added). The new regulation leaves the old regulation largely intact but uses the term “working supervisor” as opposed to “working foreman.” 29 C.F.R. § 541.106 (c). The new regulation provides the following:

[W]orking supervisor whose primary duty is performing nonexempt work on the production line in a manufacturing plant ***does not become exempt merely because the nonexempt production line employee occasionally has some responsibility for directing the work of other nonexempt production line employees*** when, for example, the exempt supervisor is unavailable. Similarly, an employee whose primary duty is to work as an electrician is not an exempt executive even if the employee also directs the work of other employees on the job site, orders parts and materials for the job, and handles requests from the prime contractor.

Id. (emphasis added). In Morgan v. Family Dollar Stores, the 11th Circuit used both the new “Working Supervisor” regulations as well as the old “working foreman” regulations to explain why 14,000 Dollar Family Store managers were not exempt executive employees. 551 F.3d 1233, 1266 (11th Cir. 2008).

Given remedial nature of the FLSA, the presumption that an employee is covered by the FLSA’s minimum wage and overtime protections, and that GLs fall within the “working supervisor” or “working foreman” regulations, Mercedes cannot meet its burden to prevail on summary judgment.

A. GLs Are Not Paid On A Salary Basis.

As a threshold matter, Mercedes’ motion must fail because there is a genuine issue of material fact whether GLs are compensated on a true salary basis. While the Court was previously addressed this issue in Hicks (see Hicks v. Mercedes, 7:08-CV-0536-LSC,

³²According to the Department of Labor’s explanation of the new regulations published in the federal register, one reason for the new regulation was to delete archaic terms like “strawboss” without disturbing the impact or effect of the concepts of the old regulations.

Memorandum of Opinion) Plaintiffs respectfully submit that the Court should revisit its decision in Hicks.

As with all elements of the executive exemption, Mercedes bears the burden of demonstrating that GLs are paid a predetermined amount of compensation that “is not subject to reduction because of variations in the quality or quantity of the work performed.” See 29 C.F. R. § 541.602(a); Corning Glass Works v. Brennan, 417 U.S. 188 (1974) (stating that employers who claim an FLSA exemption have the burden of proof). Mercedes cannot meet its burden if deductions from the GLs’ predetermined compensation are made for absences occasioned by Mercedes or by the operating requirements of the business. Id. (“If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.”). “[GLs] must receive a guaranteed salary that is not subject to docking based upon the number of hours worked.” Asher, et al. v. Aphelion Tech Sys. Integrators, Inc., et al., 1999 U.S. Dist. LEXIS 8653 (April 23, 1999).

Mercedes’ “non-production Friday” policy, a policy that was established due to the operational requirements of the production facility, is inconsistent with the salary basis test. Under Mercedes’ policy, GLs could “choose to take a vacation or holiday bank day off, use the Friday bank (in which [the GL] “withdrew” from a bank of future overtime premiums) *or take an unpaid personal day off.*” See Hicks v. Mercedes, Case No. 7:08-CV-00536-LSC, Doc. 64 (Mercedes’ Reply Brief In Support Of Its Motion For Summary Judgment), at p. 4 (emphasis added). Forcing employees to use vested accrued benefits—i.e., vacation or holiday benefits—to cover for absences occasioned by the employer does not necessarily violate the salary test. But having a GL go into debt to Mercedes or take an unpaid day off indicates that GLs are not paid a true salary.

The Department of Labor has addressed this very same issue in a related scenario

involving a health care provider that was experiencing low patient census. The DOL opined that “[a]n employee *will not* be considered to be paid “on a salary basis,” however, if any deductions from the salary are made for full or partial day absences occasioned by the employer *or by the operating requirements of the business.*” WH Op. Letter FLSA2009-18 (Jan. 16, 2009) (emphasis added). “If an employer requires that an exempt employee work less than a full workweek, the employer must pay the employee’s full salary even if: (1) the employer does not have a bona-fide benefits plan; (2) the employee has no accrued benefits in the leave bank; (3) the employee has limited accrued leave benefits, and reducing that accrued leave will result in a negative balance; or (4) the employee already has a negative balance in the accrued leave bank.” Id.

“[D]eductions from salary due to day-to-day or week-to-week determinations of the operating requirements of the business are precisely the circumstances the salary basis requirement is intended to preclude.” WH Op. Letter FLSA2009-14 (Jan. 15, 2009). “[S]alary deductions due to M[andatory] T[ime] O[ff] lasting less than a workweek violate the salary basis requirement and may cause the loss of exempt status.”

This is precisely what Mercedes’ has done here. By having GLs take an “unpaid personal day,” Mercedes’ has impermissibly reduced GLs’ salary dependent upon the operational requirements of the plant.

Mercedes’ “Friday bank” similarly conflicts with the salary test. Unlike requiring an employee to use a vested accrued benefit, the “Friday bank” forces GLs to go into debt peonage—GLs are advanced their compensation upon the condition that they work a corresponding number of hours to pay off that debt.

Thus, GLs are faced with a Hobbesian choice in deciding whether to take the Friday bank or an unpaid day off. Take the following three scenarios as an example.

Scenario 1: A GL takes an unpaid day off week 1 and does not work any overtime for week 2. His salary for the week 1 would be reduced by 8 hours pay. His salary for week 2 would be his normal salary. His Salary for the two week time span would be reduced by 8 hours pay. Because his salary for the first week is reduced pursuant to the unpaid day off, the GL is not paid a true salary. See WH Op. Letter FLSA2009-18 (Jan. 16, 2009).

Scenario 2: A GL takes an unpaid day off week 1 but then works 8-hours of overtime for week 2. His salary for the week 1 would be reduced by 8 hours pay. His compensation for week 2 would be enhanced by 8 hours pay. His Salary for the two week time span would be the same as if he worked his normal shifts. But because his salary for the first week is reduced pursuant to the unpaid day off, the GL is not paid a true salary. See WH Op. Letter FLSA2009-18 (Jan. 16, 2009).

Scenario 3: A GL takes a Friday bank for week 1. To pay off his debt, the GL works 8-hours overtime for week 2. His Salary for the two week time span would be the same as if he worked his normal shifts.

Conclusion: Scenario 3 is no different than Scenario 2 and no different than Scenario 1; it is just presented in a different way. In each scenario, a GLs pay is deducted. Scenario 3 “hides the deduction” and passes the deduction on to a later paycheck just like any creative bookkeeper does to shield assets. Even though Mercedes creatively engineered a system that purports to maintain GLs exempt status as salaried employees, the net effect of system is a salary reduction that is inconsistent with federal regulations. See WH Op. Letter FLSA2009-18 (Jan. 16, 2009).

Indeed, a similar creative system was exposed in Klein v. Rush-Presbyterian, 990 F.2d 279, 284 (7th Cir. 1992) (disapproved on other grounds by Muston v. MKI Sys., 1997 U.S. App. LEXIS 23548 (4th Cir. Va. Sept. 5, 1997)). In Klein, the plaintiff was forced to compile negative comp time to cover her personal absences. Id. The Court stated that while the plaintiff

may not have been actually paid less, she was going into a form of debt since any later accumulated comp time had to pay off that debt. Id. In concluding that the plaintiff was not paid on a salary basis, the Court stated that *“this negative comp time is similar to docking an employee's pay because of the number of hours worked”* Id. (emphasis added).

When this policy of forcing employees to go into debt or take an unpaid personal day is viewed in the context with the fact that GLs are compensated based on the total number of hours worked, there are genuine issues of material fact as to whether GLs are paid a true salary. Mercedes has always compensated GLs based on their hours worked. (See Docs. 46 (Agreed Upon Undisputed Facts, 46-1, (Exhibits to Agreed Upon Undisputed Facts)). If one GL worked 10 hours of overtime versus another GL who worked 20, the GL who worked 20 hours would make more money. And, as previously mentioned in reference to the Friday bank policy, GLs' compensation is connected to the operational requirements of the production plant. Obviously, one cannot maintain a bank of hours unless the defendant was counting hours worked, which violates the whole concept of a fixed salary for all hours worked required by the salary test of all the white collar exemptions. The deduction for not working due to a lack of work rather than the needs of the employee is anathema to a salary concept, because it puts the burden of unproductive hours on the employee instead of the employer. The “deal” with a salary is that the salary will be constant whether the employee works long and hard, or whether, through no fault of the employee, the employee cannot work a full week. Otherwise, a salary is not a two-way street, as one GL adeptly stated in his deposition:

A. The biggest complaint about the way they did our overtime and the way they it's like, I mean, are you salary or are you not salary. *One minute we're salary, we don't get overtime and the next minute you're not going to be working but you're still going to have to pay it back, so are you salary or are you not salary. . . .*

Q. And you said you can't recall a certain year that you didn't receive an

annual base salary as a group leader?

A. No, sir. But I can remember several paychecks where -- and I could probably produce credit card debt for times when salary wasn't what it was supposed to be because of work shortages and stuff, but everybody at Mercedes can do that as well. But as far as the overall annual, the bonus and everything, I can't do that ***but I can produce biweekly paychecks that were a lot less than they should have been.***

Q. But no annual salary --

A. If you look at the whole in the annual, no, sir. ***But if you look at the paychecks, you can definitely see the difference, a lot of difference.***

Q. Based on how much overtime you worked?

A. ***The time you worked and the time that we didn't work because the plant wasn't running, but again, are we salary or are we not.***

Q. When you say the plant wasn't running, are you referring to the nonproduction Fridays?

A. Nonproduction days, yes. And those were days I took. And whenever I ran out of time, ***there were several days I took unpaid.***

(Stewart Dep., pp. 169-71).³³

Clearly, as evidenced above, there was a companywide policy to vary the pay for GLs by the quantity or quality of their work by requiring the employee to "make up" time later or take an unpaid day off. It is thus inconsistent for Mercedes to argue that it paid everyone a salary but that it diminished GLs pay in one form or another. This policy exposes that GLs were not paid a true salary.

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³³ The deposition of Joel Stewart is attached as Ex. 158 to Mercedes' Evidentiary Submission (Volume 13).

B. Mercedes Cannot Meet Its Burden That GLs' Primary Duty Is Management Of A Customarily Recognized Department.

1. *Plaintiffs' Primary Duty Is Not Management; Plaintiffs Are Non-Exempt "Working Foremen/Supervisors."*

The question of whether an employee's primary duty is management is a highly factual determination "must be based on all the facts in a particular case." Morgan, 551 F.3d at 1267; 29 C.F.R. § 541.700(a) (2006); 29 C.F.R. § 541.103 (2003). In Morgan, the Eleventh Circuit re-affirmed the "necessarily fact-intensive nature of the primary duty inquiry," that "the answer is in the details," and that "[w]here an issue turns on the particular facts and circumstances of a case, it is not unusual for there to be evidence on both sides of the question, with the result hanging in the balance." 551 F.3d at 1269. The factors to consider for the primary duty inquiry are "the relative importance of the exempt duties as compared with other types of duties; the amount of time spent performing exempt work; the employee's relative freedom from direct supervision; and the relationship between the employee's salary and the wages paid to other employees for the kind of nonexempt work performed by the employee." 29 C.F.R. § 541.700(a).

Mercedes argues that Plaintiffs' primary duty is management and that their non-exempt duties are directly related to their exempt duties. In reality, the opposite is true. Plaintiffs do not conduct mere "spot checks" to examine TM work; they sit on the line as Quality Control Inspectors. See 29 C.F.R. 541 § 703(a)(3) ("A supervisor who spot checks and examines the work of subordinates [may be exempt] . . . *so long as the checking is distinguishable from the work ordinarily performed by a nonexempt inspector.*") (emphasis added). Indeed, a reasonable trier of fact could look at the evidence and conclude that Plaintiffs' primary duties are to inspect vehicles and make repairs. See, e.g., Campbell Dep., p. 157 (Q: "What do you spend most of your day doing?" A. "On line quality checks, making repairs, moving parts, answering line pulls,

quality walk backs.”); Crawford Dep., pp. 84-85 (testifying that he was directed by his AM, Philip Bradford, to stand at the end of his line and check quality; he is responsible for checking quality because there is not a quality person on Trim 1); Crowley Dep., pp. 140-42 (testifying that one of his primary duties is to check the cars for quality); Fisher Dep., p. 95 (Fisher testifies that he makes four or five repairs per day); Franklin Dep., pp. 70-71 (testifying that he makes repairs on cars); Hendley Dep., p. 79, 99 (testifying that he walks the Line and spends approximately four hours each day at the end of the line checking quality); Karpinski Dep., pp. 68-69 (Karpinski 50 percent of Karpinski’s day is spent making repairs and the other 50 percent he is walking the line, picking up parts and ordering parts); Kessler Dep., pp. 238-40 (testifying that she checked on the vehicles in her group at the end of the Line and made repairs); Oglesby Dep., pp. 91-9 (testifying that he checks cars inside and outside the plant and “check[s] 100 percent of every AMG we build right now”); Pittman Dep., pp. 61-62 (testifying that he spends 75 percent of the time inspecting vehicles); Rodgers Dep., pp. 62, 86 (testifying that he makes 30-40 repairs a day on the line); Swindle Dep., p. 84 (testifying that he spends approximately 5 to 6 hours of an eight hour shift checking quality on the line); Tidwell Dep. p., 68 (testifying that he would perform TL duties three out of five days a week).

Plaintiffs are thus the classic “working foremen” or “working supervisors” as outlined in the regulations discussed above. See 29 C.F.R. § 541.115 (1992) (“[G]roup leaders . . . [who perform] work of the same nature as that performed by the employees’ subordinates must be counted as nonexempt work and if the amount of such work performed is substantial[, i.e., 20 percent,] the exemption does not apply.”); 29 C.F.R. § 541.106 (c).

This conclusion is further supported by the fact that Plaintiffs do not exercise independent discretion in running the business or a division or subdivision thereof. See Morgan,

551 F.3d at 1270 (“Having discretionary power is one aspect of freedom from supervision [under the new regulations].”).

- Plaintiffs do not decide how to spend time during their workday. They are directed by the AM on what job duties to perform, including, being directed to work the production line.
- Plaintiffs cannot address attendance issues. Plaintiffs input attendance data into a computer application and must relay attendance data to AMs; AMs decide how to address attendance issues.
- Plaintiffs do not control manpower. Plaintiffs notify AMs of manpower issues; AMs direct manpower resources.
- Plaintiffs do not track performance. Plaintiffs relay performance data to AMs; AMs decide how to address performance issues and whether to counsel TMs.
- Plaintiffs do not direct the flow of work. Plaintiffs receive work directions from upper management and merely relay that information to TMs by holding brief meetings to relay such information and updating the SQDCM board (Maintaining a bulletin board about management tasks is not the same thing as managing, the former being clerical in nature).
- Plaintiffs do not have any authority to address TM complaints. They must escalate all issues to the AM or Human Resources.
- Plaintiffs cannot control production requirements. Those requirements are set by upper management.
- Plaintiffs cannot remedy quality issues. They merely observe cars to see if quality issues arise and, if so, they tell their AM.

- Plaintiffs do not have the authority to discipline TMs. Only AMs have the authority to issue disciplinary action.
- Plaintiffs do not have any authority to hire, fire, or promote TMs. Only AMs have such authority.

In fact, Plaintiffs perform almost none of the “management” duties set forth in the federal regulations. See 29 C.F.R. § 541.102.³⁴ Plaintiffs do no interview or select employees for TM positions. Plaintiffs do not set and adjust TM rates of pay and hours of work. Plaintiffs do not direct the work of employees—they have no control over attendance, manpower, or disciplinary issues—the AM is the one with the control. Plaintiffs do not maintain production or sales records for use in supervision or control—they give document for the AM. Plaintiffs do not appraise employees' productivity and efficiency for the purpose of recommending promotions or other changes in status—again, they just document for the AM. Plaintiffs do not handle employee complaints and grievances—they relay any dispute to the AM. Plaintiffs do no discipline employees—AMs do. Plaintiffs do not plan the work—the work flow is tightly controlled by upper management. Plaintiffs do not determine the work techniques to be used.

³⁴ Specifically, 29 C.F.R. § 541.102 states:

Generally, “management” includes, but is not limited to, activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.

Plaintiffs do not apportion the work among the employees—all manpower decisions reside with the AM. Plaintiffs do not determine the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold in the production of the vehicles (but GLs frequently act as runners to get such materials and manually fix such machines). Plaintiffs do not control the flow and distribution of materials or merchandise and supplies. Plaintiffs do not provide for the safety and security of the employees or the property—each TM is responsible for safety. Plaintiffs do not plan and control the budget—they just manually document scrap materials. Plaintiffs do not monitor or implement legal compliance measures.³⁵ Because Plaintiffs do not perform any of the quintessential management tasks outlined in the regulations, their “primary duty” cannot be to manage other TMs.

Rather than manage TMs, Plaintiffs do no more than lead a crew or group, transmit orders and observations to and from superiors, make self-evident decisions (and thus does not exercise discretion) based upon his skill and experience in the trade (rather than engage in intellectual independent selection based upon analysis and application of general principles of policy and business judgment). The managers and AMs are the supervisory personnel of the plant. Obviously, if the power and discretion is vested in the managers and AMs, it can’t be vested in the GLs. Having 116 GLs is simply too many “supervisors” to be exercising independent judgment in an assembly line situation where the goal is a consistency of quality in the product. To say it another way, not since the invention/adoption of the assembly line in automotive manufacture by Henry Ford in the early 1900’s does an automobile manufacture like Mercedes allow employees on the line to exercise idiosyncratic judgment and discretion. The

³⁵ The activity Plaintiffs arguable perform pursuant to the federal regulation’s definition of “management” is that they assist in training other TMs. But this too is misleading because all Plaintiffs really do is read off of a training script and many Plaintiffs indicate that TLs actually conduct the training.

duties of a quality control GL on the line can't involve independent judgment, because all the cars or parts produced by one group must be identical to the same cars or parts produced by another group. The fact that the groups are redundant; i.e., that two or more groups within a department do the same thing in parallel operation, belies that a GL makes any kind of decision 'of significance' independently. If this were a "one time" or "one off" custom car manufacturer, maybe there would be more opportunity for GLs to make independent decisions of significance. But the demands for a uniform product combined with a high level of on-site supervision by assistant managers, and the lack of opportunity to deviate from established policies, requires the GLs to follow established policies, make routine decisions based on experience and knowledge of the trade rather than exercise of independent judgment and the application of broad principles to specific problems and to perform almost clerical tasks on a repetitive basis.

In addition, Plaintiffs do not earn significantly more than other non-exempt employees they supposedly supervised. See 29 C.F.R. § 541.700(a); Morgan, 551 F.3d at 1271. Indeed, depending on the work week, non-exempt TMs make more than GLs. This is especially evident now after Mercedes changed its overtime policy so that GLs do not receive any overtime pay (i.e., time and a half) for hours worked over 40. (See Docs. 46 (Agreed Upon Undisputed Facts, 46-1, (Exhibits to Agreed Upon Undisputed Facts). Ex, I, pp. 4-5. Mercedes' current overtime policy for GLs is that GLs do not receive any additional pay for hours worked between 40-45 hours in a week and only receive straight time for all hours worked over 45 hours in a week. Id.

GLs have a base salary of \$67,000, which equals approximately \$31.01 per hour in compensation. See Plaintiffs' Evidentiary Submissions (Vol. 3), Exhibit 5 (N) Declaration of Jeff ("Toby") Hicks, at ¶ 24. Non-exempt TLs make \$29.16 per hour. Id. Non-exempt TMs make \$27.77 per hour. Id. Thus, if a GL, TL, and TM each work 45 hours in a particular week, their compensation would be as follows:

GL: \$1,240.40 (\$31.01 times 40 hours because GLs do not get paid for the first 5 hours over 40 in a workweek);

TL: \$1,385.10 (\$29.16 times 40 plus \$43.74 times 5);

TM: \$1,319.08 (\$27.77 times 40 plus \$41.66 times 5).

Incredibly, GLs make less than the employees they purportedly supervise! Certainly, a jury could reasonably conclude that a GLs' primary duty cannot be considered "management" if he or she makes less than his her non-exempt counterpart. See 29 C.F.R. § 541.700(a). Ultimately, this factor must be considered, in conjunction with the other primary duty factors, by a jury.

2. *Plaintiffs Do Not Manage A Customarily Recognized Department Or Subdivision.*

The phrase "a customarily recognized department or subdivision" is intended to distinguish between a mere collection of employees assigned from time to time to a specific job or series of jobs and a unit with permanent status and function. Gorman v. Cont'l Can Co., 1986 U.S. Dist. LEXIS 30856 (N.D. Ill. Jan. 3, 1986). While the regulations and the commentary in the federal register recognize that teams may constitute a recognized subdivision of the business, the regulations say this requires a case-by-case analysis and is rebutted when the teams do not do anything specialized and different from other teams. As stated in the Federal Register:

Finally, the Department observes that "groupings" or "teams" may constitute a department or subdivision under the existing definition, but a case-by-case analysis is required. See Gorman v. Continental Can Co., 1985 WL 5208, at *6 (N.D. Ill. 1985) (department or subdivision can "include small groups of employees working on a related project within a larger department, such as a group leader of four draftsmen in the gauge section of a much larger department").

69 Fed. Reg. 22122, 22134.

A GL is in charge of a team of people, who may be doing the same thing as another team or who may be doing something different. The teams change with the needs of production. They are not a department or other recognized subdivision of the business. "A customarily

recognized department or subdivision must have a permanent status and a continuing function.” 29 C.F.R. § 541.103. While the “Paint Department” may have a permanent status and continuing function, each of the three to five “groups” within the Paint Department does not. GLs do not run the departments in which they work. There is more than one GL in the Paint Department, and there is more than one group in almost every other department of the company. A group is not a subdivision of the Department and a group is not fixed and permanent. A group is simply a crew of employees who are assigned a series of tasks, all of whom report to Mercedes’ Departmental supervisor. There were about 116 GLs which means there were 116 groups. No factory has 116 different departments with each department being a unique operation within the plant. Groups were often redundant, i.e. more than one group would do the same thing as another group at the same time, in a parallel operation. Thus, the groups were not stand-alone departments or recognized subdivisions of the business, but simply crews or teams of employees, one or more levels below a subdivision. Therefore, they do not meet the test of the exemption.

C. Genuine Issues Remain As To GLs’ Authority To Hire And Fire Or Whether GLs Recommendations Are Given Particular Weight.

It is undeniable that GLs do not hire or fire anyone. The only question is whether GLs’ recommendations given “particular weight” within the meaning of 29 C.F.R. § 541.100(a)(4). This determination—whether GLs hiring and firing determinations are given any particular weight—is a highly factual determination that includes “whether it is part of the employee’s job duties to make such suggestions and recommendations; the frequency with which such suggestions and recommendations are made or requested; and the frequency with which the employee’s suggestions and recommendations are relied upon.” 29 C.F.R. § 541.1045; see also Davis v. Mountaire Farms, Inc., 453 F.3d 554, 558 (3d Cir. 2006) (concluding that the employees were not exempt because “they had no responsibility for recruiting [chicken]

catchers, no responsibility for making recommendations on the hiring or termination of individuals, and no power to hire or fire an employee, even within restricted guidelines.”).

Here, GLs do not even have the direct authority to hire and fire. Rather, GL give TMs annual performance evaluations (“PEs”). The PEs must be approved by an Assistant Manager and HR before the Group Leader is even allowed to sign the PE. The Assistant Manager and HR can and do change the PEs. Thereafter, the Manager must sign off. The PEs are only one of several evaluation tools utilized by MBUSI’s Management in determining whether to promote an employee. Management also takes into consideration performance in classes, peer reviews on a 1-5 score basis from all co-workers within the group, and scores from outside assessment teams. As well, GLs are required to fill in standard counseling forms when TMs and TLs in their group take “emergency vacations”; e.g., doctor’s appointments, without a doctor’s excuse. GLs are required to fill out standard counseling forms when TMs or TLs fail to perform a quality control countermeasure. Three such forms result in a Level I corrective performance review (CPR). This is the limit of the GLs independent discretion relating to CPRs. Level I and Level II CPRs must be approved by Department Manager/Assistant Manager, Team Relations Representative, and Employment/Team Relations Manager or Assistant Manager. For a Level III CPR and final termination, a Unit Vice President and HR Vice President’s approval is also required. Thereafter, there is an appeal process of all performance reviews resulting in termination. Obviously, Plaintiff does not have the authority to hire or fire and his recommendations are given no particular weight in MBUSI’s decisions relating to hiring, firing, promotion or advancement.

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IV. CONCLUSION

For each of the foregoing reasons, Mercedes' motion for summary judgment should be denied in their entirety together with any such relief that the Court deems proper.³⁶

Dated this 23rd day of November, 2011.

THIERMAN LAW FIRM

/s/Joshua Buck

MARK R. THIERMAN

laborlawyer@pacbell.net

JOSHUA D. BUCK

josh@thiermanlaw.com

THOMAS F. CAMPBELL

tcampbell@campbelllitigation.com

D. KEIRON McGOWIN

kmcgowin@campbelllitigation.com

Attorneys for Plaintiffs

OF COUNSEL:

Mark R. Thierman (pro hac vice)

laborlawyer@pacbell.net

Joshua D. Buck (pro hac vice)

josh@thiermanlaw.com

THIERMAN LAW FIRM, APC

7287 Lakeside Drive

Reno, Nevada 89511

Tel: (775) 284-1500

And

³⁶ Assuming that this Court enters summary judgment against the Plaintiffs, there is no just reason to enter final judgment at this time. Indeed, as Mercedes recognizes, in determining whether a court should enter final judgment, the court should consider whether piecemeal appeals will result. This is exactly what will happen. The Eleventh Circuit will receive numerous appeals resulting from the same case and the same transactional facts and circumstances. For example, the question of whether GLs are paid a true salary applies to every Plaintiff and, resolution of this question in favor of Plaintiffs, would resolve the entire case. Rather than burden the Eleventh Circuit with numerous separate appeals resulting from the same case, any decision here, should not be entered as a final judgment until the entire case can be resolved.

Thomas F. Campbell, SB # ASB-5900-M60T

tcampbell@campbelllitigation.com

D. Keiron McGowin, SB # ASB-1623-I48D

kmcgowin@campbelllitigation.com

CAMPBELL LAW

A Professional Corporation

100 Concourse Parkway, Suite 115

Birmingham, Alabama 35244

Tel: (205) 397-0307

Fax: (205) 278-6654